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AMERICAN HISTORICAL ASSOCIATION.

STUDIES IN THE HISTORY OF THE FEDERAL
CONVENTION OF 1787.

BY

JOHN FRANKLIN JAMESON,
PROFESSOR, UNIVERSITY OF CHICAGO.

From the Annual Report of the American Historical Association for 1902.
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By Prof. JOHN FRANKLIN JAMESON.

Of the papers here printed, the first was read at the Philadelphia meeting of the Association. The rest owe their presence here to the merciful institution known as "leave to print." Most of them are merely essays in "the lower criticism." But need one apologize for textual criticism in such a case? Minute and technical studies respecting transactions intrinsically unimportant may justly be disapproved. But those persons who agree with Darwin's declaration that the Anglo-Saxon migration across the Atlantic may very likely be the most important event in human history will think that the minutiae of the Philadelphia Convention are as well deserving of elaboration as those of the councils of Sardica and Chalcedon—not to say Nicea and Trent. An age which every year prints some scores of pages of textual criticism of the lives of Merovingian saints can surely devote a few to the immediate origins of the American Constitution, though it be but to "settle *hottis* business." The following is a list of the papers comprising the series:

- I. Letters from the Federal Convention.
- II. Letters not heretofore printed.
- III. List of letters in print.
- IV. The text of the Virginia plan.
- V. The text of the Pinckney plan.
- VI. The text of the New Jersey plan.
- VII. The text of Hamilton's plan.
- VIII. The Wilson drafts for the committee of detail.
- IX. Members who did not sign.
- X. The action of the States.
- XI. Journals and debates of the State conventions.

Of the above papers, those numbered II and III seem to

be necessary adjuncts of the first; No. VIII presents an important new text; No. IX is intended to meet an apparent though small need. Of X and XI, which are bibliographical in their character, no more is thought than that they may possibly help some weary brother. I venture to think No. V the most important.

I. LETTERS FROM THE FEDERAL CONVENTION.

There is certainly no lack of information concerning the doings of the great Federal Convention which met in this city one hundred and fifteen years ago. The proceedings of each day may be followed in the journal of the Convention and in the invaluable record of its debates kept by Madison—not the least of the many public services for which we are indebted to that methodical little man. Yet I think it not hopeless to attempt to derive some further illustrations of its history from the letters written by various of the members during the continuance of its sessions. Such as they are, they form a record no less authentic than the official journal, and even more strictly contemporaneous than Madison's notes in the form in which the latter have been presented to us. Moreover, their number is not small. About eighty have been printed, in whole or in part or in summary,^a and through the kindness of their owners I have been permitted to have copies of a considerable number which still remain in manuscript. It is true that many, if not most of them, are insignificant for the present purpose. It is also true that their contents are vastly less instructive than they would doubtless have been if the Convention had not, on May 29, adopted as one of its formal rules the injunction "that nothing spoken in the House be printed or otherwise published or communicated without leave."^b But it should be remembered that a portion, though a small portion, of the transactions of the Convention preceded this decree. In the second place, not every member, though to be sure nearly all, observed the rule with the utmost strictness. Gilman of New Hampshire, excusable perhaps as having arrived very late and but a few days before the date of the

^aA list of the printed letters forms No. III of this series of studies. In the footnotes to this first paper letters are, for the sake of brevity, referred to by their numbers on that list.

^bDocumentary History of the Constitution, I, 54.

letter quoted, writes to his cousin Joseph, with an astonishing misconception of a very stringent rule—

As secrecy is not otherwise enjoined than as prudence may dictate to each individual, in a letter to my brother John, of the 28th instant, I gave him (for the satisfaction of two or three who will not make it public) a hint respecting the general principles of the plan of National Government that will probably be handed out—which will not be submitted to the legislatures, but after the approbation of Congress to an assembly or assemblies of representatives recommended by the several legislatures, to be expressly chosen by the people to consider and decide thereon.^a

(The letter to John Taylor Gilman seems not to be extant.) Other members felt the obligation of the rule to be somewhat relaxed during the later portion of the Convention's proceedings, when the great questions had been settled, and communicated to their anxious friends some notion of the stage which had been reached in the transactions, and even in a few cases some hints of the contents of the instrument which they were framing. Even the cautious and punctilious Madison, writing on the 6th of September, feels free to describe the Constitution in outline to his correspondent, because that correspondent is Jefferson in Paris and the Convention is evidently within a few days of adjournment.^b Finally, it is worth noting that a certain number of the letters are addressed by members remaining in Philadelphia to members who have gone home, or vice versa, and in these we find, as we might expect, a greater freedom of utterance.^c A notable example is a most striking letter of Washington to Hamilton, written at the crisis of the Convention.^d But of this later.

Naturally it is the outward aspects of the Convention which are most largely illustrated by these letters. Some of them exhibit the slowness of the members in arriving at Philadelphia—the tedious delays in securing a quorum.^e Others relate the comings and goings of such as did not remain throughout the entire four months.^f It would in most cases be possible by their use to explain the absence of those members whose names are not signed to the instrument, yet who are not

^aNo. 54.

^bNo. 75.

^cLetters of members to members are: Nos. 6, 8, 19, 24, 32, 39, 49, 55, 63, 67, 69, 70, 77.

^dNo. 39.

^eNos. 1, 4, 5, 6, 9-13, 51. No. 17 gives a list of members.

^fNos. 24, 27, 37, 42, 43, 48, 49, 50, 55, 56, 62, 63, 66, 68.

named as among those who refused their signatures.^a The most interesting of the letters of the absent is that in which Hamilton explains to Rufus King that he had written to his recalcitrant colleagues informing them that if either of them would come down he would accompany him to New York. "So much," he says, "for the sake of propriety and public opinion." "In the meantime," he adds, "if any material alteration should happen to be made in the plan now before the Convention, I will be obliged to you for a communication of it. I will also be obliged to you to let me know when your conclusion is at hand, for I would choose to be present at that time."^b Later he writes inquiring into the truth of the rumor, current in New York, that some late changes in the scheme have taken place "which give it a higher tone."^c Interesting also are those letters which show that one of Major Pierce's reasons for absence was the expectation of fighting a duel, in which Hamilton was second to his adversary.^d

Some of the earlier letters show the anxieties and difficulties of the members as to quarters.^e Some of them went into lodgings, some to taverns. Washington was entertained at the house of Robert Morris. Mason put up at the old Indian Queen, in Fourth street, above Chestnut, where, says he—

we are very well accommodated, have a good room to ourselves, and are charged only twenty-five Pennsylvania currency per day, including our servants and horses, exclusive of club in liquors and extra charges; so that I hope I shall be able to defray my expenses with my public allowance, and more than that I do not wish.^f

As time went on, however, and the proceedings bade fair to be prolonged far beyond the time originally expected, not a few of the members found their public allowance far from sufficient, and letters to the executives of the States asking for remittances to meet unexpected expenses are not infrequent.^g They are not themselves dissatisfied that the work is

^aThis has been attempted, by means of these letters and other sources of information, in No. IX of this series of papers, pp. 157-160, *infra*.

^bNo. 63.

^cNo. 69.

^dNos. 48, 49, 50.

^eNos. 4, 6, 8.

^fNo. 4. That Pierce lodged at this same hostelry appears from his statement in a memorandum printed in the *American Historical Review*, III, 328. Madison and Charles Pinckney lodged in the same house with each other (Madison's Letters, IV, 203); so probably did Read and Dickinson (No. 8).

^gNos. 18, 22, 23, 41, 51, 53.

being done deliberately," but Madison twice writes Jefferson that the public mind is very impatient for the event.^b Early in July there is a prediction that the delegates will be detained till the middle of August.^c Before the end of July the 1st of September is talked of as the time of release.^d By the middle of August a continuance till the middle of September begins to be foreseen.^e

Something of the social life of the members transpires in the letters,^f though not so much as in Washington's diary.^g The daily dinners and tea-drinkings which that much-enduring man tranquilly records wore desperately upon the country-loving and less patient spirit of George Mason. He had been but ten days in Philadelphia when he wrote:

I begin to grow heartily tired of the etiquette and nonsense so fashionable in this city. It would take me some months to make myself master of them, and that it should require months to learn what is not worth remembering as many minutes is to me so discouraging a circumstance as determines me to give myself no manner of trouble about them.^h

It is not illegitimate to derive a little amusement from the comparison of two letters of Franklin.ⁱ The one (corroborated by Washington's diary) shows that he entertained the members at dinner on the 16th of May, two days after the date on which the Convention should have begun its sessions. The other, in which he is describing to his sister the recent enlargements of his house, tells her that his new dining-room enables him to have a dinner-party of twenty-four. As president of Pennsylvania, the sagacious doctor must dine the delegates; but, born not in vain in Yankee land, he placed his invitation early, when not half the delegates had arrived. It was not his fault that they were so slow in assembling. As nearly as it can be calculated, there must have been just about

^a Nos. 23, 61.

^b Nos. 14, 75.

^c No. 35.

^d Nos. 46, 51.

^e Nos. 58, 59, 62, 65.

^f Nos. 2, 11, 14, 28.

^g Washington's diary for the period of the Convention exists in two forms. The Library of Congress possesses a volume, which, according to its *Calendar of Washington Manuscripts* (pp. 65, 66), "is probably the original notebook from which the amplified diary, now in the Department of State, was written at a later period." Its text for the period in question was printed, with omissions, in the *Pennsylvania Magazine of History*, XI, 296-308. From the diary in its finished form, preserved at the Department of State, extracts have been printed by Sparks (IX, 538-541) and by Ford (XI, 140-155).

^h No. 11.

ⁱ Nos. 2, 11.

twenty-four members in town on the 16th; two days later they would have been, in a proper sense, one too many for him.

But much more important things than these are to be found in the letters. Beginning with the earliest letters, we catch glimpses of those private and preparatory consultations of which the official records tell us nothing. "The Virginia deputies (who are all here)," says Mason, writing in the days when a quorum had not yet come together, "meet and confer together two or three hours every day, in order to form a proper correspondence of sentiments; and for form's sake, to see what new deputies are arrived, and to grow into some acquaintance with each other, we [that is, the Convention] regularly meet every day at 3 o'clock."^a The ordinary hours of meeting, by the way, are stated by one member as being from 10 o'clock till 4.^b Franklin writes to his sister, immediately after the adjournment of the Convention:

I attended the business of it five hours in every day from the beginning, which is something more than four months. You may judge from thence that my health continues; some tell me I look better, and they suppose the daily exercise of going and returning from the statehouse has done me good.^c

Washington in his diary speaks of "not less than five, for a large part of the time six, and sometimes seven hours, sitting every day."

But to return to the earliest days of the Convention. It will be remembered that soon after the Randolph or Virginia plan was presented Charles Pinckney, of South Carolina, presented a plan, and also that it has wholly disappeared,^d for that which is printed in the journal under his name is demonstrably something quite different. Now, a letter written in those early days before a quorum had been obtained gives an

^aNo. 4.

^bNo. 62. The journal, however, shows these hours as definitely fixed during only the period from August 18 to August 21. See No. 67. After that the hours were from 10 to 3. From May 28 to June 2 the hour of meeting was 10 o'clock, from June 4 to August 18 11 o'clock, but without specified hour for adjournment. Documentary History, I, 132, 154; 141, 559, 613, et passim.

^cNo. 81. Watson, *Annals*, ed. 1891, I, 402, says that the municipal authorities covered the street pavement outside the statehouse with earth to silence the rattling of wheels during the time of the Convention. In the Documentary History, I, 280, is printed a communication from the Library Company of Philadelphia, extending the privilege of drawing books to the members of the Convention during its continuance.

^dSo it was universally supposed at the time when this paper was read; but see pp. 128, 132, *infra*, and the American Historical Review, VIII, 509-511.

outline of a plan which the writer of the letter had seen and copied, and which, though he does not give the author's name, can be demonstrated to have been Pinckney's, which accordingly was in existence as early as May 20.^a

The events of the first days' proceedings of the Convention are not related in a manner different from that of the journal; but the letters show much of the spirit which the delegates manifested at the beginning of their labors, of the various expectations which they and others formed concerning their work, and of the prevalent notions as to what it should be.^b If George Mason's estimate was correct, the prevailing opinion at the beginning of the sessions was in favor of a total renovation of the existing articles and a government at least as strongly centralized as that which was outlined in the Virginia resolutions soon after presented.^c But it should be said that his estimate was formed at a time when the large States were more fully represented in Philadelphia than the small. The spirit in which the work was begun was obviously marked by the expectation and the desire of harmony. Many passages declare, forcibly and even eloquently, the writers' sense of the magnitude of the occasion and of the critical situation in which the United States stood.^d Pierce in his notes, published a few years ago, speaks of himself as having occupied "a seat in the wisest council in the world."^e Johnson, of Connecticut, a graver man, tells his son that the assembly includes many of the ablest men in America,^f while Robert Morris writes to his sons in Germany that they ought to pray for a successful issue to the Convention's labors, "as the result is to be a form of government under which you are to live, and in the administration of which you may probably hereafter have a share, provided you qualify yourselves by application to your studies,"^g and one of the North Carolina delegates takes satisfaction in believing that they have contributed to the happiness of millions.^h

The situation of the General Government [wrote Washington], if it can be called a government, is shaken to its foundation and liable to be overturned by every blast. In a word, it is at an end, and unless a remedy is soon applied anarchy and confusion will inevitably ensue.ⁱ

^a No. 6. See pp. 119, 120, *infra*.

^b Nos. 4, 5, 9, 15, 16, 18.

^c No. 5.

^d Nos. 10, 15, 16, 21, 28, 60, 66.

^e *American Historical Review*, 111, 334.

^f No. 29.

^g No. 28.

^h No. 66.

ⁱ No. 15.

No member of the Convention was less inclined to rhetorical exaggeration than George Mason; none surpassed him in the gift of a terse and masculine eloquence.

America [he writes to his son] has certainly upon this occasion drawn forth her first characters. There are upon this Convention many gentlemen of the most respectable abilities and, so far as I can discover, of the purest intentions. The eyes of the United States are turned upon this assembly and their expectations raised to a very anxious degree. May God grant we may be able to gratify them by establishing a wise and just government. For my own part I never before felt myself in such a situation, and declare I would not, upon pecuniary motives, serve in this Convention for a thousand pounds per day. The revolt from Great Britain and the formations of our new governments at that time were nothing compared to the great business now before us. There was then a certain degree of enthusiasm which inspired and supported the mind; but to view through the calm, sedate medium of reason the influence which the establishment now proposed may have upon the happiness or misery of millions yet unborn is an object of such magnitude as absorbs, and in a measure suspends, the operations of the human understanding.^a

It may naturally be supposed that the hopefulness with which the Convention began its work was overclouded by the discordant debates which marked the last days of June and the first days of July, days in which it long seemed impossible to bring into any agreement the conflicting desires of the large and the small States. Several extant letters show that this was plainly felt to be the great crisis of the Convention, in which the danger of breaking up without result was imminent.^b Most strikingly is this shown by the letter of Washington to Hamilton already alluded to.

When I refer you [he says] to the state of the counsels which prevailed at the period you left the city [some ten days before] and add that they are now, if possible, in a worse train than ever, you will find but little ground on which the hope of a good establishment can be formed. In a word, I almost despair of seeing a favorable issue to the proceedings of our Convention, and do therefore repent having had any agency in the business. * * * I am sorry you went away. I wish you were back. The crisis is equally important and alarming, and no opposition, under such circumstances, should discourage exertions till the signature is offered.^c

As has already been said, in the later months of the Convention one finds in the correspondence occasional disclosures as to the stage reached in the proceedings. But these add nothing to what is in the journal, except the evidences of relief when, the main outlines of the Constitution having

^a No. 16.

^b Nos. 30-33, 39.

^c No. 39.

been completed, it had been handed over to the Committee of Detail.^a More interesting are the letters in which hints respecting the Constitution itself are conveyed.

It is not probable [writes one of the North Carolina delegates, August 12] that the United States will in future be so ideal as to risk their happiness upon the unanimity of the whole, and thereby put it in the power of one or two States to defeat the most salutary propositions and prevent the Union from rising out of that contemptible situation to which it is at present reduced.^b

Gilman's disclosures as to the process of ratification have already been mentioned. Madison, after outlining to Jefferson the powers proposed to be conferred on the General Government, remarks:

The extent of them may perhaps surprise you. I hazard an opinion, nevertheless, that the plan, should it be adopted, will neither effectually answer its national object nor prevent the local mischiefs which everywhere excite disgust against the State governments.^c

As the Convention draws to its close several members, looking forward to the action of Congress upon it, express to the authorities of their States an anxiety that the latter shall maintain an adequate representation in Congress, in order that that body may act promptly, and get the Constitution before the State legislatures at their autumnal sessions.^d One of the last letters is one in which Dickinson, writing to Read, authorizes the latter to sign his name to the Constitution, as he wishes to leave a few days before the close.^e I am informed by Mr. Andrew H. Allen, the official custodian of the original document, that Dickinson's signature to it is undoubtedly written in Read's hand. Finally comes the brief note in which Maj. William Jackson, secretary of the Convention, informs General Washington that--

Major Jackson, after burning all loose scraps of paper which belong to the Convention, will this evening wait upon the General with the journals and other papers which their vote directs to be delivered to his excellency Monday evening.^f

^aNos. 34, 46, 56, 58, 65, 68.

^bNo. 58.

^cNo. 75.

^dNos. 34, 62, 65.

^eNo. 77.

^fNo. 78. From a conversation with Jackson in 1818, which John Quincy Adams records, *Memoirs*, IV, 175, it appears that Jackson did preserve extensive minutes of the debates of the Convention. Possibly these are still extant; see Appleton's *Cyc. Biog.*, s. v., but also *Pa. Mag. Hist.*, II, 353.

A group of letters which in strictness falls outside the present subject, yet which presents much the same sort of interest, is that of the letters written by members in the next day or two after the adjournment. General Washington transmits a copy of the Constitution to Lafayette, with a brief note:

It is the result of four months' deliberation [he says]. It is now a child of fortune, to be fostered by some and buffeted by others. What will be the general opinion or the reception of it is not for me to decide, nor shall I say anything for or against it. If it be good, I suppose it will work its way; if bad, it will recoil on the framers.^a

Randolph sends a copy to Beverley Randolph, the lieutenant-governor, who had been taking his place as head of the executive of Virginia during his absence; and adds, in a sentence characteristic of his tortuous mind:

Altho' the names of Col. Mason and myself are not subscribed, it is not therefore to be concluded that we are opposed to its adoption. Our reasons for not subscribing will be better explained at large, and on a personal interview, than by letter.^b

The members from North Carolina are careful to explain promptly to their governor how completely the interests, and especially the pecuniary interests, of North Carolina have been safeguarded by the great compromises and by some of the minor provisions of the proposed Constitution.^c The series fitly ends with a letter of Madison to Edmund Pendleton, in which he sums up in a sentence the history of the Convention:

The double object of blending a proper stability and energy in the Government with the essential characters of the republican form, and of tracing a proper line of demarcation between the national and State authorities, was necessarily found to be as difficult as it was desirable, and to admit of an infinite diversity concerning the means among those who were unanimously agreed concerning the end.^d

II. LETTERS NOT HERETOFORE PRINTED.

1. *David Brearley to Jonathan Dayton (extract).*^e

PHILADELPHIA, 9th June 1787.

DEAR SIR: * * * We have been in a Committee of the Whole for some time, and have under consideration a number

^aNo. 83.

^bNo. 82.

^cNo. 79.

^dNo. 85.

^eFrom a copy kindly furnished by Mr. Simon Gratz, of Philadelphia, who possesses the original manuscript.

of very *important* propositions, none of which, however, have as yet been reported. My colleagues, as well as myself, are very desirous that you should join us immediately.^a The importance of the business really demands it.

2. *David Brearley to William Paterson.*^b

PHILADELPHIA 21 Aug. 1787.

DEAR SIR: I was in hopes after the Committee had reported, that we should have been able to have published [*! finished*] by the first of September, at present I have no prospect of our getting through before the latter end of that month. Every article is again argued over, with as much earnestness and obstinacy as before it was committed. We have lately made a rule to meet at ten and sit 'til four, which is punctually complied with. Cannot you come down and assist us,—we have many reasons for desiring this; our duty, in the manner we now sit, is quite too hard for three,^c but a much stronger reason is, that we actually stand in need of your abilities.

I am, most respectfully, dear sir, your obedient humble servant

DAVID BREARLEY.

3. *Extract from the Pennsylvania Journal.*^d

We are informed, that many letters have been written to the members of the federal convention from different quarters, respecting the reports idly circulating, that it is intended to establish a monarchical government, to send for the bishop of Osnaburgh, &c., &c.—to which it has been uniformly answered, tho' we cannot, affirmatively, tell you what we are doing, we can, negatively, tell you what we are not doing—we never once thought of a king.

^aDayton took his seat June 21. Brearley, Houston, Paterson, and Livingston were already present at the time when the letter was written.

^bFrom a copy found among the MSS. of George Bancroft at the Lenox Library, "Paterson MSS.," p. 603. There seems to be no evidence of Paterson's presence from July 23 to the time of signing the Constitution. Documentary History, III, 405.

^cI. e., Brearley, Livingston, and Dayton. Documentary History, I, 140, 144; III, 561, 574, 596.

^dOf August 22, 1787. Mentioned in Curtis, History of the Formation of the Constitution, II, 495, and Constitutional History, I, 626. I have procured a copy of it and inserted it here mainly that it may be seen not to be an individual letter, though its phrases are taken from one written two days before by Governor Martin, letter No. 65. Upon its subject, see Humphreys to Hamilton, in the latter's works, ed. Hamilton, I, 412; Hamilton's History of the Republic, III, 331; J. C. Hamilton, Life of A. Hamilton, II, 535.

*4. Nathaniel Gorham to Caleb Strong.^a*PHILADELPHIA Aug^l 29

MY DEAR SIR I rec^d your favour from N York and was pleased to find that you had got on so well. inclosed is a Letter that came to hand for you. We have now under consideration the 18th Article which is that the United States shall guarantee, &c. &c.^b

I am in hopes we shall be done in about 20 days. There are several things referred which will take some time.

Remember me to our friend Sedgwick.

5. Jonathan Dayton to Gen. Elias Dayton (extract).^c

PHILADELPHIA, Sept. 9, 1787.

DEAR SIR: * * * We have happily so far finished our business, as to be employed in giving it its last polish and preparing it for the public inspection. This, I conclude, may be done in three or four days, at which time the public curiosity and our desire of returning to our respective homes, will equally be gratified.

III. LIST OF LETTERS IN PRINT.

The following is intended as a list of letters to be found in print, written by members of the Philadelphia convention during its sessions, whether the same are perceived to have any importance to history or not. Letters printed only in extract or in summary are included, and also some letters of importance written just after the adjournment. On the other hand, letters written by members before they arrived in Philadelphia, though after the opening of the convention, are not included:

1. May 15. Madison to Jefferson. Letters and other Writings, I, 328.
2. May 18. Franklin to Thomas Jordan. Works, ed. Sparks, X, 304; ed. Bigelow, IX, 386.
3. May 18. Franklin to George Whatley. Works, ed. Sparks, X, 306; ed. Bigelow, IX, 388.

^aThe original of this letter is possessed by the Historical and Natural History Society of South Natick, Mass. A copy was kindly furnished by Gustavus Smith, esq., president of the society.

^bConsideration of article 18 of the report of the committee of detail was not begun, according to the journal, until the session of August 30 was well advanced. Documentary History, I, 169.

^cFrom a copy kindly sent by Mr. Simon Gratz, owner of the original.

4. May 20. Mason to George Mason, jr. Miss Rowland's Mason, II, 100; Hart, *Contemporaries*, III, 203; extract in Bancroft, *Constitution*, II, 421.
5. May 21. Mason to Arthur Lee. Lee's Arthur Lee, II, 319; Rowland, II, 102.
6. May 21. Read to John Dickinson. Read's George Read, p. 443.
7. May 24. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 289.
8. May 25. Read to John Dickinson. Brotherhead, *Book of the Signers*, 1861, p. 63.
9. May 27. Madison to Edmund Pendleton. Letters, I, 328.
10. May 27. Madison to James Madison, sr. Letters, I, 329.
11. May 27. Mason to George Mason, jr. Rowland, II, 103.
12. May 27. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 290.
13. May 30. Davie to James Iredell. McRee, *Life of Iredell*, II, 161.
14. May 30. Franklin to Mrs. Jane Mecom. Works, ed. Bigelow, IX, 392.
15. May 30. Washington to Jefferson. Sparks, IX, 254; Ford, XI, 156.
16. June 1. Mason to George Mason, jr. Rowland, II, 128; extract in Bancroft, II, 424.
17. June 6. Madison to Jefferson. Letters, I, 330.
18. June 6. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 293.
19. June 9. Brearley to Jonathan Dayton. See p. 98, *supra*.
20. June 10. Madison to Monroe. Extract in "Washington-Madison Papers" (McGuire sale catalogue), p. 129.
21. June 11. Gerry to Monroe. Extract in Bancroft, II, 428.
22. June 12. Spaight to Governor Caswell. N. C. Records, XX, 723.
23. June 14. Four N. C. delegates to Caswell. N. C. Records, XX, 723.
24. June 16. Wythe to Edmund Randolph. From Williamsburg. Summarized in the Calendar of the Emmet Collection, No. 9542.
25. June 19. Davie to Caswell. N. C. Records, XX, 725.
26. June 19. Davie to James Iredell. McRee's Iredell, II, 161.
27. June 21. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 298.
28. June 25. Robert Morris to his sons. Extract in *Pennsylvania Magazine of History*, II, 170.
29. June 27. Johnson to his son. Extract in Bancroft, II, 430.
30. June 30. Mason to Beverley Randolph. Rowland, II, 131; Calendar of Virginia State Papers, IV, 310.
31. July 1. Washington to David Stuart. Sparks, IX, 257; Ford, XI, 159.
32. July 3. Hamilton to Washington. From New York. J. C. Hamilton, *Life of A. Hamilton*, II, 522; Works, ed. Hamilton, I, 435; ed. Lodge, VIII, 175; *Hamilton's Republic*, III, 317; Sparks, *Letters to Washington*, IV, 172; Hunt, *Madison*, III, 351.

33. July 3. Spaight to Iredell. McRee, Iredell, II, 162.
34. July 7. Four North Carolina delegates to Caswell. N. C. Records, XX, 733.
35. July 8. Williamson to Iredell. McRee, II, 163.
36. July 9. Washington to Hector St. John de Crèvecoeur. Sparks, IX, 259.
37. July 10. Blount to Caswell. N. C. Records, XX, 734.
38. July 10. Blount to William Constable. N. C. Records, XX, 734.
39. July 10. Washington to Hamilton. Sparks, IX, 260; Ford, XI, 162; J. C. Hamilton, *Life of A. Hamilton*, II, 527; *Hamilton's Works*, ed. Hamilton, I, 437; *Hamilton, Republic*, III, 322.
40. July 12. Blount to Caswell. N. C. Records, XX, 739.
41. July 12. Randolph to Beverley Randolph. *Calendar of Virginia State Papers*, IV, 315.
42. July 16. Wythe to Beverley Randolph. *From Williamsburg. Brotherhood, Centennial Book of the Signers*, 1876, p. 257.
43. July 17. Davie to Iredell. McRee, II, 165.
44. July 18. Madison to Jefferson. *Letters*, I, 333.
45. July 19. Washington to R. H. Lee. *Lee's R. H. Lee*, II, 35; Sparks, IX, 261; Ford, XI, 163.
46. July 22. Williamson to Iredell. McRee, II, 167.
47. July 23. Sherman to Timothy Pickering. Summarized in *6 Mass. Hist. Soc. Coll.*, VIII, 451.
48. Hamilton to ———. *Works*, ed. Hamilton, I, 437; ed. Lodge, VIII, 176.
49. Hamilton to William Pierce. *Writings*, ed. Lodge, VIII, 177.
50. July 26. Hamilton to Auldjo. *Works*, ed. Hamilton, I, 439; ed. Lodge, VIII, 178.
51. July 27. Alexander Martin to Caswell. N. C. Records, XX, 753.
52. July 28. Madison to James Madison, sr. *Letters*, I, 335.
53. July 30. Strong to Alexander Hodgdon, treasurer of Massachusetts. Summarized in the *Calendar of the Emmet Collection*, No. 545.
54. July 31. Gilman to Joseph Gilman. N. H. State Papers, XXI, 835.
55. Aug. 5. McClurg to Madison. *From Richmond. Summarized in Bulletin of the Bureau of Rolls and Library*, IV, 487.
56. Aug. 6. Davie to Iredell. McRee, II, 167.
57. Aug. 12. Madison to James Madison, sr. Summarized in *Bulletin of the Bureau of Rolls and Library*, IV, 68.
58. Aug. 12. Spaight to Iredell. McRee, II, 168.
59. Aug. 13. Gerry to Gen. James Warren. *Austin, Life of Gerry*, II, 36.
60. Aug. 15. Washington to Lafayette. Sparks, IX, 262; extract in Ford, XI, 162.
61. Aug. 19. Washington to Knox. Sparks, IX, 264.
62. Aug. 20. Blount to Caswell. N. C. Records, XX, 764.
63. Aug. 20. Hamilton to Rufus King. J. C. Hamilton, *Life of A. Hamilton*, II, 533; *Works*, ed. Hamilton, I, 439; ed. Lodge, VII, 178; *Hamilton, Republic*, III, 329; *King's King*, I, 258.

64. Aug. 20. Hamilton to Jeremiah Wadsworth. Works, ed. Hamilton, I, 440; ed. Lodge, VIII, 179.
65. Aug. 20. Alexander Martin to Caswell. N. C. Records, XX, 763.
66. Aug. 20. Williamson to Caswell. N. C. Records, XX, 765.
67. Aug. 21. Brearley to William Paterson. See p. 99, *supra*.
68. Aug. 23. Davie to Caswell. From Halifax, N. C. N. C. Records, XX, 766.
69. Aug. 28. Hamilton to Rufus King. J. C. Hamilton, *Life of A. Hamilton*, II, 533; Works, ed. Hamilton, I, 441; ed. Lodge, VIII, 179; Hamilton, *Republic*, III, 329; King's *King*, I, 258.
70. Aug. 29. Gorham to Caleb Strong. See p. 100, *supra*.
71. Sept. 2. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 338.
72. Sept. 3. Gilman to John Sullivan. N. H. State Papers, XVIII, 790.
73. Sept. 3. Pierce to Don Diego de Garloqui. From New York. New Jersey Journal, November 28, 1787; Carey's *American Museum*, II, 583.
74. Sept. 4. Madison to James Madison, sr. Letters, I, 336.
75. Sept. 6. Madison to Jefferson. Letters, I, 337.
76. Sept. 9. Dayton to Gen. Elias Dayton. See p. 100, *supra*.
77. Sept. 15. Dickinson to George Read. Read's *Read*, p. 456.
78. Sept. 17. Maj. William Jackson, secretary of the Convention, to Washington. Bancroft, II, 441.
79. Sept. 18. Blount, Spaight, and Williamson to Caswell. N. C. Records, XX, 777.
80. Sept. 18. Gilman to Joseph Gilman. Arthur Gilman, *The Gilman Family*, p. 109; G. Hunt, *Fragments of Revolutionary History*, p. 156.
81. Sept. 18. Gilman to John Sullivan. N. H. State Papers, XXI, 836.
82. Sept. 18. Randolph to Beverley Randolph. Calendar of Virginia State Papers, IV, 343.
83. Sept. 18. Washington to Lafayette. Sparks, IX, 265.
84. Sept. 20. Franklin to Mrs. Jane Mecom. Writings, ed. Bigelow, IX, 406.
85. Sept. 20. Madison to Edmund Pendleton. Letters, I, 340.
86. Sept. 28. Pierce to St. George Tucker. *American Historical Review*, III, 313.

IV. THE TEXT OF THE VIRGINIA PLAN.

The Virginia or Randolph plan for the amendment of the Articles of Confederation, presented to the Federal Convention on May 29, is commonly held to be a familiar and certain document. Yet there exist four different texts of these resolutions, and, what is more remarkable, it can (in the view of the present writer) be proved that no one of the four is the exact text of the original series which Governor Randolph laid

before the Convention on May 29, 1787. As doubts, to say the least, attend also the text of the other plans presented, it may be well before proceeding to attempt a demonstration of this thesis to explain why it is not inconceivable that, important as these documents were, their exact text may be uncertain.

Luther Martin in one of the opening passages of his *Genuine Information*, says of the Convention: "*a*

So extremely solicitous were they that their proceedings should not transpire, that the members were prohibited even from taking copies of resolutions on which the Convention were deliberating, or extracts of any kind from the journals, without formally moving for and obtaining permission by a vote of the Convention for that purpose.

The rules of the Convention now in print,^b bear him out so far as the journals are concerned, but not as to resolutions, which like the various "plans," were not regarded as parts of the journal. Yet the injunction "that nothing spoken in the House be printed, or otherwise published, or communicated without leave," doubtless required secrecy as to the plans. Pierce says,^c speaking apparently of the Virginia plan:

A copy of these propositions was given to each member with an injunction to keep everything a profound secret. One morning, by accident, one of the members dropped his copy of the propositions, which, being luckily picked up by General Mifflin, was presented to General Washington, our President, who put it in his pocket.

He goes on to relate how the General, the next day, just before adjournment, forcibly reproved such carelessness, threw the paper on the table—

and quitted the room with a dignity so severe that every person seemed alarmed; for my part I was extremely so, for putting my hand in my pocket I missed my copy of the same paper; but advancing up to the table my fears soon dissipated; I found it to be the handwriting of another person.

In other words, the copy which each member had of the propositions was, in the ordinary case, a copy made by his own hand. Those who know how few persons can copy

^a Yates, ed. 1821, p. 12; Elliot, I, 315. I quote Elliot, unless the contrary is stated, from that edition of 1836 and subsequent years which is designated on its title-page as the second, but is the third—the edition commonly used. See also what Martin says, *ibid.*, 358, of the refusal of the Convention to permit its members at the time of the adjournment of July 26, "to take correct copies of the propositions to which the Convention had then agreed."

^b *Documentary History of the Constitution*, I, 54.

^c *American Historical Review*, III, 321.

anything accurately will see here a natural source of variations, even in that more formal and deliberate age. Moreover, there would always be much chance that a member, following the progress of debate and conclusion with his paper before him, should interline it with some of the additions or amendments which were successively resolved upon, and that these should creep undistinguished into some fair copy which he might subsequently make.

Whatever be the causes, the variations certainly exist. Of the Virginia resolutions there are, as we have said, four texts. As the original text in Randolph's handwriting, if such there were, is nowhere said now to exist, it is natural to take up first that which Madison gives.^a It is printed in the Documentary History of the Constitution^b and in Hunt's Writings of James Madison.^c Gilpin printed it, with a small but important variation, in The Madison Papers,^d and it may also be found in the volume strangely called "Journal [meaning Debates] of the Federal Convention, kept by James Madison * * * edited by E. H. Scott,"^e and in the fifth volume of Elliot.^f This text, which we may call A, is sufficiently described by saying that the ninth resolution in its series begins with the words:

Resolved, That a national judiciary be established, to consist of one or more supreme tribunals and of inferior tribunals to be chosen by the National Legislature, to hold their offices during good behavior, and to receive, etc.

Texts of this type can not in this section exactly represent the original resolutions. This may be seen by an examination of the journal of the Committee of the Whole for June 4 and June 5.^g It there appears, by explicit quotation, that the ninth resolution undoubtedly contained originally the words:

Resolved, That a national judiciary be established, to be appointed by the National Legislature, to hold their offices during good behavior, and to receive, etc.

^a Though the speech with which Randolph accompanied the introduction of his resolutions appears in Madison's notes in Randolph's handwriting, the text of the resolutions there given is in Madison's hand. — Hunt, Writings of James Madison, III, 21 n.

^b III, 17-20.

^c III, 17-21.

^d II, 731-735.

^e Pp. 61-61. Mr. Hunt gives to Madison's notes the same inappropriate and misleading name.

^f Pp. 128-130. There are differences of punctuation; but they are hardly significant.

^g Documentary History, I, 210; Elliot, I, 160, 161.

Of the insertion of the other words quoted above in this clause, or, rather, of the insertion of words closely resembling them, there is definite record in the form of a vote of the Committee of the Whole, June 4, "to add these words to the first clause of the ninth resolution, namely: 'To consist of one supreme tribunal, and of one or more inferior tribunals.'"^a Plainly these words can not have been in the original plan. Furthermore, on June 12

it was moved and seconded to alter the resolution submitted by Mr. Randolph, so as to read as follows, namely: "That the jurisdiction of the supreme tribunal shall be to hear and determine in the dernier resort all piracies, felonies, etc."^b

In other words, now that a provision for both supreme and inferior tribunals—a provision not included in the original document—had been inserted by the committee, it seemed necessary also to modify the clause relating to jurisdiction by giving to the supreme tribunal the position of an appellate court. Now, text A in this clause gives the reading—

That the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, all piracies, etc.

As before, the proposal recorded in Committee of the Whole shows that these words were not in the original resolutions. It will be noticed that here one supreme court is spoken of, whereas in the earlier clause the reading of A is "one or more supreme tribunals," in itself an improbable reading.

Probably Article 9 of the Virginia plan originally read:

Resolved, That a national judiciary be established, to be appointed by the National Legislature, to hold their offices during good behavior; and to receive punctually, at stated times, a fixed compensation for their services, in which no increase or diminution shall be made so as to affect the persons actually in office at the time of such increase or diminution; that its jurisdiction shall be to hear and determine all piracies and felonies on the high seas, all captures from an enemy, and cases in which foreigners or citizens of other States applying to such jurisdiction may be interested; [perhaps, also,] or which respect the collection of the national revenue, impeachment of any national officers, and questions which may involve the national peace and harmony.

^aDocumentary History, I, 210; Elliot, I, 160, 161, and Madison's notes in Documentary History, III, 62.

^bDocumentary History, I, 222.

The votes in the Committee of the Whole^a do not enable one to be sure whether these last lines were or were not in the original draft.

It was intimated above that Gilpin's text shows a peculiarity not found in the books first mentioned. In view of the pains taken with the text of the Documentary History and by Mr. Hunt, it is to be supposed that a phrase which is not in their versions has no place in the manuscript which they and Gilpin alike follow. However, as the insertion is one which plays a part in other texts than A, it may be as well to consider it at this point. It occurs in the text of the sixth of the Virginia resolutions, toward the end of that article. This concluding portion, in Gilpin, declares that the National Legislature ought to be empowered —

to negative all laws passed by the several States, contravening in the opinion of the National Legislature the articles of Union, *or any treaty subsisting under the authority of the Union*; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof.

The words italicized above are those not found in the Documentary History or in Hunt's Writings of James Madison. That they formed no part of the original document may be seen by inspecting the journal of the Committee of the Whole for May 31, where we read:^b "The following words were added to this clause on motion of Mr. Franklin, 'or any treaties subsisting under the authority of the Union.'" Yet Rives^c in his summary of the plan adds the words "and treaties" at this point, and so does Madison himself in a letter to John Tyler, written about 1833.^d It may be added that Madison, in his summary of the resolutions, given in this same letter, inserts the provision for supreme and inferior tribunals, discussed above,^e and so does Bancroft, in a summary which he places in quotation marks.^f

Text B of the Virginia plan is to be found in the official Journal of the Convention, published in 1819 under the author-

^a Documentary History, I, 223; III, 117.

^b Documentary History, I, 203; Elliot, I, 153.

^c Life of James Madison, II, 314.

^d McGuire, Selections from the Correspondence of James Madison, p. 312; Letters of Madison, IV, 283.

^e Ibid., 310; *ibid.*, 282.

^f History of the Formation of the Constitution, II, 12.

ity of the Secretary of State;^a in Yates's Secret Proceedings and Debates,^b and in the second edition and the third or usual edition of Elliot's Debates.^c Yates says: "I have taken a copy of these resolutions, which are herewith annexed." But Lansing, who transcribed Yates's notes, says, in a passage not copied into Elliot,^d that the several papers referred to did not accompany them, and we are compelled to infer that the single source of all these versions is the Journal of 1819. The peculiarities of this text are the following: In the sixth resolution it contains the words "or any treaty subsisting under the authority of the Union." The ninth begins with the words "*Resolved*, That a national judiciary be established to hold their offices during good behavior, and to receive punctually," etc. Yet though in this first clause there is no mention of the distinction between higher and lower Federal courts, the clause relating to jurisdiction, in the same resolution, begins with the words "That the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier ressort," etc. Finally, there is, in Elliot's third edition,^e an additional resolution, with the number 16, reading: "That the House will to-morrow resolve itself into a Committee of the Whole House, to consider of the state of the American Union." It is obvious that this last is obtained by "running in" with the resolutions a portion of the journal of the Convention's proceedings of May 29.^f That the provision respecting treaties, in Article 6, has no place in the document, has already been shown in the case of Gilpin. As to Article 9, the journal of the Committee of the Whole, June 5, when this article was receiving its first consideration, reads:^g "It was then moved and seconded to strike out the words 'the national legislature,' so as to read 'to be appointed by,'" Accordingly the first clause of the article must have originally contained the words "to be appointed by the national legislature," and any text which does not contain them can make no claim to be the true original. To the phrases about the jurisdiction of su-

^a Pp. 67-70.

^b Pp. 209-212 of the edition of 1821; pp. 226-229 of that of 1839.

^c Second edition, I, 180-182, "second" (third) edition, I, 113-115.

^d Yates, ed. 1821, p. 207.

^e But not in the first, nor in Yates, nor in the Journal of 1819.

^f Documentary History, I, 55.

^g *Ibid.*, I, 211.

preme and inferior tribunals the same arguments apply as have been adduced above in the criticism of text A, but with additional force from the fact that if the distinction had not been made in the first clause of the article it is unlikely that we should find it appearing in the last.

Text C is printed only in the Documentary History.^a It is derived from a manuscript which came to the Department of State from Gen. Joseph Bloomfield, executor of David Brearley, member of the Convention from New Jersey.^b It can not correctly represent the original for the following reasons: In Article 4 it provides that the term of the members of the first branch of the national legislature shall be three years, yet the journal of the Committee of the Whole for June 12 shows the committee on that day for the first time inserting the words "three years" into a blank previously existing at this point.^c Article 5 provides that the members of the second branch shall be "elected by the individual legislatures," which was not agreed to (as a substitute for election by the first branch) until June 7.^d Thirdly, in Article 6 the provision respecting treaties, already commented upon, is included. Fourthly, the beginning of Article 7 reads:

Resolved, That a national executive be instituted, to consist of a single person, with powers to carry into execution the national laws, and to appoint to offices in cases not otherwise provided for, to be chosen by the national legislature for the term of seven years, to receive punctually, etc.

But the journal of the Committee of the Whole, June 1,^e shows exactly what must have been the reading of the original at this point, namely: "*Resolved*, That a national executive be instituted, to be chosen by the national legislature for the term of — years, to receive punctually," etc.; and it shows the stages by which this became modified into the form presented by text C. Fifthly, Article 9 of the latter begins: "*Resolved*, That a national judiciary be established, to consist of one supreme tribunal, to hold their offices during," etc.; yet recognizes in its clause respecting jurisdiction the same distinction of supreme and inferior which is made in text B, and in the same words. Finally, Article 13 declares that the assent of the national legislature "ought to be required" to proposed amendments to the articles of union, whereas the

^a Documentary History, I, 329-332.

^b Journal (of 1819), pp. 10, 11.

^c Documentary History, I, 220.

^d Ibid., I, 202, 215.

^e Ibid., I, 205.

quotation of this resolution in the journal of the Committee of the Whole ^a supports the reading "ought *not* to be required," which is given in the other texts, and must obviously be correct in any case.

The fact apparently is that text C represents the original, plus most of the modifications made up to about June 11 or 12. Incorrect as it is, it may not improbably be the source from which Secretary Adams derived the more correct text (B) which he printed in the official journal in 1819; for, the manuscript journal not containing these resolutions, it is difficult to see what other text than Brearley's could have been accessible to him.

Text D is not in print, but is found among the manuscripts of William Paterson, member of the Convention from New Jersey.^b In the form in which it now exists, it is not a first rough copy on separate sheets (the form in which we may assume that the members' copies of the Virginia resolutions were first taken), but is copied neatly into a little book, which also contains Judge Paterson's copies of several other fundamental documents of the Convention.^c This text omits from the fourth resolution the words, "to be incapable of reelection for the space of ——— after the expiration of their term of service;" but this may be a mere slip, due to the verbal similarity of this phrase to that which in the other texts precedes it. Like B and C and Gilpin's version of A, it inserts in the sixth resolution the provision respecting treaties. It fills the blank in the number of years of the Executive's term of office (seventh resolution) with the word "seven," which the Committee of the Whole did not do till June 1.^d In the ninth resolution, while the reading is otherwise like that of text A, there is a blank before the word "inferior," so that the phrase reads: "Of one or more supreme tribunals, and of ——— inferior tribunals." Although, for reasons already given, these words can not be considered to have been a part of the original document, it may be that the form in which they here appear represents, more correctly than that presented by Madison, the intentions of the Committee of the Whole on June

^a Documentary History, I, 219.

^b Lent to the writer by the kindness of Miss Emily K. Paterson, of Perth Amboy. There is a copy among the Bancroft MSS. at the Lenox Library.

^c The report of the Committee of the Whole House, Judge Paterson's own resolves, and Colonel Hamilton's plan.

^d Documentary History, I, 205.

4 and June 5. The committee then voted, first, to add the words "to consist of one supreme tribunal and of one or more inferior tribunals," and then to strike out the words "one or more."^a It may have been intended to leave a blank in the place of the latter. However this may be, arguments already stated suffice to show that text D has no more claim than the others to represent the exact form of the Virginia resolutions, laid before the Convention on May 29 by Edmund Randolph. The exact form of those resolutions can be recovered only by inference, and in one or two particulars remains uncertain.

V. THE TEXT OF THE PINCKNEY PLAN.

On May 29, immediately after the Virginia resolutions had been referred to a Committee of the Whole House, "Mr. Charles Pinckney, one of the deputies of South Carolina, laid before the House for their consideration the draft of a Federal Government" which he had prepared, and it also was referred to that committee.^b There is no evidence of any debate upon it beyond the author's remark, that he "confessed that it was grounded on the same principle as of the above resolutions,"^c meaning those offered by Governor Randolph. Nor does it appear to have been separately considered at any subsequent time. On July 24 the Committee of the Whole was discharged from further consideration of it, and it was referred to the Committee of Detail, along with the resolutions reported from the Committee of the Whole and those offered by Paterson, of New Jersey.^d No mention of it in the Convention by anyone but its author seems to have come down to us. There is something noteworthy in this silence. It is not impossible that the other members thought their youngest colleague somewhat presumptuous in offering his lucubration at the very outset and laying it complacently alongside the mature conclusions of the grave and experienced Virginia Delegates.^e

^a Documentary History, I, 210, 211.

^b *Ibid.*, I, 55.

^c Yates, ed. 1821, p. 97; Elliot, I, 391; Documentary History, III, 14, 31.

^d Documentary History, I, 109; III, 423, 443.

^e O'Neill, Bench and Bar of South Carolina, II, 140, tells us that Pinckney always said in after life that he had never risen to address the Convention without feelings of deep diffidence and solemnity; so, also, "W. S. E." in De Bow's Review, XXXIV, 61. But the letters printed by the present writer in the American Historical Review, IV, 113-129, reveal a character marked by much vanity and self-assertion. See, also, Jefferson's Writings, ed. Ford, VII, 289.

Moreover, in 1818, when the Secretary of State, John Quincy Adams, was preparing the journal of the Convention for publication, no copy of the Pinckney draft was found either among its original papers or among those which had been added by General Bloomfield. In the hope of repairing the omission, Adams, after applying in vain to Madison, who had no copy,^a wrote to Pinckney, then still living in South Carolina, and asked him for a copy of his proposals.^b Pinckney replied, in a letter which has been printed,^c saying that he had among his papers four or five rough drafts of his plan, and could not be absolutely sure which was the one actually presented; but that they differed in no essentials, only in some words and the arrangement of the articles, and that he sent the one which he believed to be the proper document. Adams printed the document in the *Journal*,^d with a footnote saying that the paper had been furnished by Pinckney. From that day (1819) to this it has figured in many books as the "Pinckney plan." It is printed, in identical text, in Yates,^e in Elliot,^f in Gilpin,^g in the *Documentary History*,^h and even in Justice Miller's *Lectures on the Constitution*ⁱ and Hunt's *Writings of James Madison*.^j The paper which Pinckney sent to Adams is still in the custody of the Department of State. Mr. Hunt, who gives a facsimile of a portion of it and of a part of the letter in which it was inclosed, declares that the plan is written upon paper of the same size as the letter, and with the same ink; that it is undoubtedly contemporaneous with the letter, and that both are written on paper bearing the water-mark of the year 1797.^k

That the so-called "Pinckney plan" is not authentic has

^a See his letter in the appendix to J. C. Hamilton's *History of the Republic*, third edition, III, 131.

^b See *Memoirs of John Quincy Adams*, IV, 365.

^c Letter of December 30, 1818, printed by Mr. Worthington C. Ford in the *Nation* of May 23, 1895, LX, 397, 398; and by Mr. Gaillard Hunt in his *Writings of James Madison*, III, 22-24. An extract was printed in 1870 by Rives, in his *Life and Times of James Madison*, II, 354. Mr. Hunt is in error in saying, III, 25 n., that the letter is printed in the *Documentary History*.

^d Pp. 71-81.

^e Ed. 1821, pp. 212-221. The source is the *Journal* printed two years before; see the note to p. 207.

^f I, 145-149.

^g Pp. 735-746.

^h I, 309-318.

ⁱ Pp. 732 ss.

^j III, 23-36.

^k *Writings of James Madison*, III, xvii and 24.

been so publicly and so successfully demonstrated that a writer who does not like to spend his time in slaying the slain might be excused if he took this for granted and passed on to cast what new light he could upon the problem of the real Pinckney plan. But in reality the two inquiries are closely connected; and, moreover, the legendary version has such vitality that it is no harm to cast one more stone upon its funeral cairn as one passes by. In 1859 a South Carolina writer assures us that, in view of the remarkably close agreement between Pinckney's proposals and the finished Constitution, "he has always been considered as entitled to the high and honorable designation of the Father of the Constitution."^a This was before much of the pertinent evidence to the contrary had been made public. But such was not the case when, in 1894, in the income-tax decision, the Chief Justice of the Supreme Court of the United States quoted the "Pinckney plan" as if it had authority.^b It may be that—

"Error, wounded, writhes in pain,
And dies among his worshippers;"

but, if we are speaking of historical error, he manifestly takes his time about it.

The supposed plan might instantly be put out of court on the ground that it is "too good to be true." A novice in historical criticism, provided he had read the story of the long and shifting and sometimes bitter disputes by which the Convention had hammered into shape a Constitution for the United States, would say at once that it was glaringly improbable—in fact, impossible—that as the result of this process they should come around to the acceptance, to the extent of five-sixths, of a document offered to them at the outset in full detail; or, to put it in another way, that their youngest member should succeed beforehand in framing a constitution so good that they could hardly improve it, yet that "the wisest council in the world" should not be able to perceive this fact till they had wrangled over the document (without expressly mentioning it) for more than three months.

^aJ. B. O'Neill, Bench and Bar of South Carolina, II, 439. So, also, "W. S. E. of S. C.," in his sketch of Pinckney in *De Bow's Review*, XXXIV, 63. "W. S. E." was William Sinker Elliott, grandson of Pinckney.

^b*Pollock v. Farmers' Loan and Trust Co.*, 157 U. S. Reports, 562.

It now appears that the document had not been long published before its authenticity was privately disputed. John Taylor, of Caroline, to be sure, who in his *New Views of the Constitution* (1823) might be supposed to have exhausted suspicion concerning the integrity of the Journal, seems to accept the "Pinckney plan" without a murmur.^a But Rufus King, who died in 1827, told John Quincy Adams that it was not genuine, and Madison said the same to Jared Sparks when Sparks visited him at Montpelier in April, 1830. As the passage of Adams's diary in which these questionings are brought out has apparently not before been used in this connection, and as they seem to be the earliest recorded, it may be worth while to quote at length from that "copious storehouse of damnations."^b

Sparks said he had been spending a week at Mr. Madison's, who spoke to him much of the proceedings and published Journal of the Convention of 1787. He said he knew not what to make of the plan of Constitution in that volume purporting to have been presented by Charles Pinckney, of South Carolina. He said there was a paper presented by that person to the Convention, but it was nothing like the paper now in the book. It was referred to the committee who drafted the plan of the Constitution, and was never afterwards in any manner referred to or noticed. In the book it has the appearance as if it was the original draft of the Constitution itself, and as if that which was finally adopted was Pinckney's plan, with a very few slight alterations. I told Mr. Sparks that Rufus King had spoken to me of C. Pinckney's paper precisely in the same manner as he says Mr. Madison now does; that it was a paper to which no sort of attention was paid by the Convention, except that of referring it to the committee, but when I compiled the Journal of the Convention, Charles Pinckney himself sent me the plan now in the book as the paper which he had presented to the Convention, and with it he wrote me a letter which obviously held the pretension that the whole plan of Constitution was his and that the Convention had done nothing more than to deteriorate his work by altering some of his favorite provisions. Sparks said Mr. Madison added that this plan now in the book contained several things which could not possibly have been in Pinckney's paper, but which rose out of the debates upon the plan of Constitution reported by the committee. He conjectured that Mr. Pinckney's memory had failed him, and that, instead of a copy of the paper which he did present, he had found a copy of the plan reported by the committee with interlined amendments, perhaps proposed by him, and, at a distance of more than thirty years, had imagined it was his own plan.

^a P. 19.

^b May 1, 1830. *Memoirs*, VIII, 221, 225. See also Sparks's record of his conversation with Madison in H. B. Adams's *Jared Sparks*, I, 463, and his correspondence with Madison, *ibid.*, II, 225-231.

In several letters written during the next few years, but not published till 1867, Madison went into the question more explicitly. Writing to Sparks in 1831, he declared the evidence against the draft irresistible.^a For instance, he pointed out that, whereas in that document the House of Representatives is made the choice of the people, it was the known opinion of Pinckney, who lodged in the same house with him at Philadelphia, that they should be chosen by the State legislatures; that on June 6 Pinckney, agreeably to previous notice, moved an amendment in that sense; and that in a letter to him, dated March 28, 1789, Pinckney had asked him if he was not "abundantly convinced that the theoretic nonsense of an election of the members of Congress by the people, in the first instance, is clearly and practically wrong."^b In two subsequent letters—one written in 1834 to T. S. Griuké, the other in 1835 to W. A. Duer—he dwelt upon the same discrepancies, using the Journal rather than his own notes as the touchstone, and requesting the letters to be regarded as confidential.^c It is not necessary to detail all the comparisons made. Substantially the same were published in 1840 in an appendix to Madison's notes of the debates, edited by Gilpin.^d

In this memorandum, moreover, and in two of the letters mentioned above, Madison adduces evidence from another quarter in support of his contention that the draft could not be what it purported to be. This is from a pamphlet entitled "Observations on the Plan of Government, submitted to the Federal Convention in Philadelphia on the 28th [*sic*] of May, 1787, by the Hon. Charles Pinckney, esq., LL. D., Delegate from the State of South Carolina, delivered at different times in the course of their discussions." It was "privately printed" in New York within a month of the rising of the Convention. Madison, on October 14, sends a copy of it to Washington.^e

^a Letters of Madison, IV, 201-203; Adams's Sparks, II, 227.

^b In January of the same year Pinckney had written to the same effect to Rufus King: "You know I always preferred the election of representatives by the legislature to that of the people, and I will now venture to pronounce that the mode which you and Madison and some others so thoroughly contended for and ultimately carried is the greatest blot in the Constitution." (Life and Correspondence of Rufus King, I, 359.)

^c Letters of Madison, IV, 337, 378. See also pp. 172, 181, 183.

^d Gilpin, III, app. v-vii; Elliot, V, 578, 579.

^e No. 113 in Ford's Bibliography of the Constitution.

^f Letters of Madison, I, 312; Sparks, Letters to Washington, IV, 182. Washington's copy of the pamphlet is still in existence. Catalogue of the Washington Collection in the Boston Athenæum, p. 535.

They exchange sentiments upon it, in their grave manner. Washington writes: "Mr. C. Pinckney is unwilling, I perceive by the inclosures contained in your favor of the 13th [14th], to lose any fame that can be acquired by the publication of his sentiments."^a To which Madison replies: "Mr. Charles Pinckney's character is, as you observe, well marked by the publications which I inclosed."^b It is not generally known that Pinckney immediately reprinted his "Observations" in a South Carolina newspaper.^c In 1857 they were reprinted by Frank Moore in Volume I of his *American Eloquence*.^d The original is very rare.^e Madison, in 1831, having but a mutilated copy, took pains to borrow one from New York, and by its means had no difficulty in casting still further discredit on the draft contributed by Pinckney to the *Journal*.^f The pamphlet did not, indeed, give the text of the project to which its title referred. But many references were made to it in the course of the "Observations," which, in fact, had the form of a series of arguments based on its provisions, which were taken up in order, and in some cases cited by number. It was plain that they differed widely from those of the printed draft.

In 1840 and in 1859 John C. Hamilton exposed fully the untrustworthy character of the latter.^g In 1870 Rives did the same.^h When Bancroft in 1882 published his *Formation of the Constitution* he contented himself with saying only of the draft submitted to the Convention by Pinckney that "no part of it was used and no copy of it has been preserved."ⁱ In 1894, in a review article in the *Nation*, the worthlessness of the accepted text was again insisted on. This led to the publication of Pinckney's original letter by Mr. Worthington

^a October 22, 1787. Ford, XI, 175; Sparks, IX, 274. Sparks characteristically has "Mr. C. P.———."

^b October 28. Gilpin, II, 653; Elliot, V, 568; Sparks, *Letters to Washington*, IV, 186.

^c A copy of the *State Gazette of South Carolina* for November 1, 1787, in the library of the American Antiquarian Society, contains an installment (evidently the second) of the pamphlet, and others follow in the two succeeding numbers (November 5, 8), which are all the society possesses for that month. No doubt the print began October 29 and ran till November 29.

^d Pp. 362-370.

^e Mr. Ford notes copies at the Astor Library and in the libraries of the Boston Athenaeum and the Massachusetts and New York Historical Societies.

^f *Letters*, IV, 182. See his comparisons which accompany the letter to Duer, *id.*, IV, 379.

^g *Life of Hamilton*, II, 469; *History of the Republic*, III, 258-260.

^h *Life and Times of Madison*, II, 353-357.

ⁱ II, 14.

Ford, as already mentioned,^a and to an article by Mr. Paul L. Ford, in which he used the pamphlet "Observations" as the basis for an attempt to reconstruct the actual Pinckney plan.^b Just how far this method is valid will be considered later. For the present it is sufficient to have narrated how, by a series of criticisms extending from Rufus King's time to ours, the so-called draft has been so utterly discredited that no instructed person will use it as it stands as a basis for constitutional or historical reasoning. What relation it bears to the actual plan is a matter for separate investigation. We have seen what Madison's kindly explanation was, as given in conversation with Sparks. In another form, with a difference to which we shall advert later, he also gives his view of the matter in a note printed by Gilpin, namely, that at some time, having lost the original, Pinckney had resorted for a copy—to the rough draught, in which erasures and interlineations, following what passed in the Convention, might be confounded, in part at least, with the original text, and after a lapse of more than thirty years confounded also in the memory of the author.^c

But is it possible to recover the provisions of the actual Pinckney plan? There is one, and so far as now appears only one, secure method of recovering a part of them.^d We may be fairly certain that any provisions which Pinckney is found advocating, against the general opinion or against the clauses of the plan which the Committee of the Whole had adopted as the main basis of its discussions, are portions of his own plan, provided we find him advocating them during the next two weeks after its presentation. At later stages his moving an amendment or speaking in its favor is no clear evidence of this, for it is then possible that the process of debate may have suggested to his mind a new device or convinced him of the merit of one suggested by another. Now it so happens that in his suggesting of provisions, as revealed by the recorded debates, there are two well-defined periods.

^aNation, LX, 398, May 23, 1895.

^bIbid., LX, 458, June 13, 1895.

^cGilpin, III, app. vi.

^dA footnote in Hunt's Madison, III, 25, says that "correspondence with Pinckney's descendants reveals the fact that some of the notes to which he alludes in his letters are extant;" but Mr. Hunt tells me that this is a misprint—"some" for "none." See his preface, p. xiv. See also note ^a on p. 131. The statement in the text now requires modification, in view of my discovery of large parts of Pinckney's original text. See p. 128, *infra*.

The one extends to June 13, the main period of consideration in Committee of the Whole. Then comes, save for one occasion, a long hiatus, extending to July 5, during which he shows no advocacy of definite provisions. On June 25, to be sure, he makes a long and elaborate speech, a "great effort," of which he was evidently proud, for he gave Madison a copy of it,^a and used it later in the South Carolina convention;^b but it is not a thing from which definite details of his preferences can be derived. These emerge again after July 5, and from time to time till the end of the Convention; but now the discussions stood on an altered basis in so many respects that, as intimated above, we can not relate his remarks to his plan with the same sense of security.

Throughout the first of these two periods, the fortnight immediately following the announcement of his plan, all Pinckney's motions and remarks go to show that it, "grounded," as he himself declared, "on the same principle as" the Virginia plan,^c provided for a national government with a bicameral legislature, an executive, and a judiciary. He planned for a single executive^d to be elected by the national legislature^e for the term of seven years,^f and for a judiciary to be elected by the same body.^g His national legislature was to have a general power to negative State laws.^h The members of its first or more numerous branch were to be elected by the legislatures of the States.ⁱ In this branch each State was to be represented by a number of members proportioned to the

^a Documentary History, III, 199-207; Gilpin, II, 945-954; Elliot, V, 233-238; Hunt, III, 267-277. Another version, containing the same matter differently arranged, is in Documentary History, III, 789-795. Yates, pp. 161-163; Elliot, I, 443-444.

^b It is printed in the State Gazette, of South Carolina, for May, 1788. Mr. A. S. Salley, of Charleston, and Miss Mary Robinson, of Worcester, have kindly searched that paper for me. It is also printed in Carey's American Museum, IV, 256-263, and in Elliot, IV, 318-323.

^c Yates, p. 97; not "principles," as in Elliot, I, 391. The context shows that Yates meant the principle of consolidation.

^d June 1, 2. Documentary History, III, 35, 51; Hunt, III, 57, 77; Yates, p. 101; Elliot, I, 391.

^e Pierce, in American Historical Review, III, 321. See also Documentary History, III, 355; Hunt, III, 451, 452 (July 17).

^f June 1. Documentary History, III, 39; Hunt, III, 63.

^g June 5, 13. Documentary History, III, 64, 117; Hunt, III, 92, 157; Yates, p. 120; Elliot, I, 109.

^h June 8. Documentary History, III, 88; Hunt, III, 121; Yates, p. 108; Elliot, I, 400; King, I, 597, 598.

ⁱ June 6, 7. Documentary History, III, 69; Hunt, III, 99; Yates, p. 105; Elliot, I, 397; King, I, 593. See also the letters of January and March, 1789, to King and Madison, already mentioned.

number of its free inhabitants plus three-fifths of the slaves.^a Its members were to be reeligible, and not subject to recall by the legislatures of their States.^b The members of the second branch were to be elected either by the State legislatures or by the first branch, it is not certain which.^c Each State was to have from one to three members in this branch, according to its population.^d The States were also to be grouped into four great geographical districts for senatorial elections, seemingly with the object of securing a four-years' rotation.^e Apparently Pinckney had provided for a council of revision, consisting of the executive magistrate and the heads of the principal departments;^f and apparently he had arranged that if unanimity could not be secured nine States should be authorized to unite under the new form of government.^g

Here was a very respectable scheme, which might well have received much attention if the Virginia plan, which in general it so much resembled, had not had the right of way. It seems to have escaped notice that this true plan of Pinckney's is partially described, though without mention of his name, in a contemporary letter long in print.^h Writing to Dickinson and urging his attendance, George Read, of Delaware, under date of May 21, says:

I am in possession of a copied draft of a federal system intended to be proposed, if something nearly similar shall not precede it. Some of its principal features are taken from the New York system of government.

^aJune 11. Documentary History, III, 106, 107; Hunt, III, 113. According to Pierce ubi sup., 324, he had on June 6 declared for a representation proportioned to pecuniary contributions. Later, July 6, 12 (Doc. Hist., III, 283, 324; Hunt, III, 368, 115), he declared his personal preference for counting the whole population, free and slave.

^bJune 12. Documentary History, III, 114; Hunt, III, 152.

^cMay 31, June 7, 8. Documentary History, III, 31, 86, 94; I, 216; Hunt, III, 52, 119; cf. Read's letter, described infra.

^dJune 7, 8. Documentary History, III, 69, 84; Hunt, III, 119, 127. To the same effect in Documentary History, III, 263, 264; Hunt, III, 343, 344; Yates, p. 201; Elliot, I, 471. This is later, July 2, but Pinckney is expressly referring to his own plan, as he did also on June 25, reading from it at the end of his long speech, as appears from the conclusion, summarized by Yates, p. 163 (Elliot, I, 411), but not given by Madison.

^eMay 31. Pierce, in American Historical Review, III, 319. In later remarks, July 11, Pinckney suggests for each State its number of senators, varying from 1 to 4; probably his four districts, the senators from one of which would have retired each year, would have been (1) New England, (2) New York, New Jersey, and Pennsylvania, (3) Delaware, Maryland, and Virginia, (4) the Carolinas and Georgia. Documentary History, III, 335; Hunt, III, 428.

^fJune 6. Documentary History, III, 78; Hunt, III, 110.

^gJune 5. Documentary History, III, 67; Hunt, III, 96.

^hW. T. Read's Life and Correspondence of George Read, p. 413. I am informed by Mr. John W. Jordan, secretary of the Historical Society of Pennsylvania, that while the letter is among the George Read papers possessed by the society, the copied draft is not.

A house of delegates and senate for a general legislature, as to the great business of the Union. The first of them to be chosen by the legislature of each State, in proportion to its number of white inhabitants, and three-fifths of all others, fixing a number for sending each representative. The second, to wit, the senate, to be elected by the delegates so returned, either from themselves or the people at large, in four great districts, into which the United States are to be divided for the purpose of forming this senate from," which, when so formed, is to be divided into four classes for the purpose of an annual rotation of a fourth of the members. A president having only executive powers for seven years.

The resemblance between these details and those which we have discovered admits of but one explanation. Plainly this is the Pinckney plan, completed before May 21, while the delegates were still assembling;^b and the description adds some useful items to our search.

Perhaps others can be gleaned from some motions made by Pinckney late in July, from his opposition to impeachment of the President and his desire for property qualifications for Federal officials;^c but here we are treading on less secure ground, and certainly some of his motions of this period are contrary to his proposals of the first weeks.^d Least of all can such a course of inference be pursued with regard to the numerous proposals which Pinckney made in the last month of the Convention.^e

But what of the pamphlet "Observations?" It has been effectively used as a means of reconstructing Pinckney's original draft,^f and probably most of the results thus obtained are substantial. Yet considerable skepticism is justified. In the first place, if one asks what evidence there is that the

^aThis device would have seemed much like that which then prevailed in the election of senators for the New York legislature.

^b"W. S. E. of S. C.," in De Bow, XXXIV, 63, says: "This draft was made in Charleston before the writer thereof had any opportunity of conference with his co-workers, and carried with him to the Convention."

^cJuly 29, 26. Documentary History, III, 383, 386, 435, 437.

^dViz., the proposal of July 21, that the judges should be chosen by the second branch, and that of July 25, that the executive should be reeligible only six years in every twelve. Documentary History, III, 400, 427.

^eAugust 18, 20, September 14, 15. Id., 555, 556, 565, 567, 745, 747, 755.

^fBy Mr. Paul Ford, Nation, LX, 458. But not always correctly. He gives the House of Delegates, instead of the Senate, a four years' term. He places the head of the home department among the President's Cabinet officers, though the speech gives the President himself the special care of that department. He says that the President is given no appointing power, whereas he is given power to appoint all officers but the judges and the foreign ministers. He mistakenly derives a fugitive-slave provision from that concerning fugitives from justice. He says that the power to levy imposts is subject to a limitation on the percentage, whereas Pinckney says: "I thought it improper to fix the percentage of the imposts, because," etc. Moore, I, 367.

speech was ever delivered in the Convention, even in portions "at different times in the course of their discussions" (as the title has it), we are obliged to confess that there is none. The present writer does not believe that any portion of this long oration, save one paragraph,^a was ever heard in Independence Hall. It is simply incredible that it should have been delivered, even in small portions administered from day to day, yet have escaped absolutely all notice from either Madison, Yates, Pierce, or King. Moreover, in spite of the title-page, it can not have been administered in small portions, but if given at all must have been given at once, and on May 29, the very day on which the plan was first read. For in the very closing paragraphs we find such language as this:

In opening the subject, the limits of my present observations would only permit me to touch the outlines [of my plan]. * * * The first object with the Convention must be to determine on principles. The most leading of these are * * * In order to bring a system founded on these principles to the view of the Convention, I have sketched the one which has just been read. I now submit it with deference to their consideration, and wish, if it does not appear altogether objectionable, that it may be referred to the examination of a committee. * * * I am doubtful whether the Convention will, at first, be inclined to proceed as far as I have intended; but, etc.

In other words, this purports to be a speech delivered after the plan had been read and before it had been referred; that is to say, delivered on May 29. No one can believe that a speech of such length and interest was made on that day yet escaped the notice of Madison and Yates.^b Madison's words are well known: "I was not absent a single day, nor more than a casual fraction of an hour in any day, so that I could not have lost a single speech unless a very short one."^c

But though the speech may be as imaginary as those of Herodotus or Thucydides, its statements as to the plan are probably entitled to some credit, especially as we find them agreeing with a number of the results which we have derived from the debates in the Committee of the Whole and from Read's letter. Not many structural details are added to those. The term of the Senate is to be four years; but that was implied in the plans for rotation. The Executive is to be

^aThe next to the last, which appears in another context, in the debate of July 2. Documentary History, III, 263; Hunt, III, 343, 344.

^bPierce had not yet taken his seat, and King's notes do not cover this day.

^cHunt, II, 410, 411.

reeligious. He is provided with a Cabinet. He is to be commander-in-chief, and to appoint all officers except the judges and the ministers to foreign countries.^a He is also stated to be removable by impeachment, though Pinckney strongly opposed this in the Convention.^b On the other hand, many new details, of considerable interest if we can trust them, are given concerning the powers to be intrusted to Congress. Some of them merely repeat the provisions of the Articles of Confederation. Of the rest, the most important are: an unqualified right to raise troops; the right to levy taxes upon the States in proportion to the white population plus three-fifths of the slaves, to regulate trade, to levy imposts, to institute all necessary offices, to erect a Federal court with jurisdiction over Federal and international cases, and to appoint courts of admiralty in the States; an exclusive right to coin money and to determine in what species of money the common treasury should be supplied; an exclusive right to regulate the militia and order its movements; the right to coerce States into furnishing their quotas of militia, to admit new States, to consent to the division and annexation of small States, and to pass a uniform law for naturalization. A two-thirds majority was to be requisite for those acts which under the Confederation had required the assent of nine States in Congress, and for acts regulating trade, levying an impost, or raising a revenue. A less number than thirteen States (nine, it is intimated) should suffice to ratify the new Constitution, or subsequently to amend it.^c

But next there occur certain miscellaneous provisions that are certainly without authority. They are described as securing—

the privilege of the writ of habeas corpus, the trial by jury in all cases, criminal as well as civil, the freedom of the press, and the prevention of religious tests as qualifications to offices of trust or emolument. * * * There is also an authority to the national legislature, permanently to fix the seat of the General Government, to secure to authors the exclusive right to their performances and discoveries, and to establish a federal university.^d

Of these seven provisions, the last three were introduced into the Convention on August 18, in almost identical terms,

^a Moore, I, 364.

^b July 20. Documentary History, III, 383, 386.

^c Moore, I, 366-369, arts. 6-10, 16; the rest are not cited in the speech by number.

^d Moore, I, 369.

by both Madison and Pinckney, and Pinckney, we are told, in a phrase which would hardly be used of features of his original plan, "proposed for consideration several additional powers which had occurred to him."^a Madison, moreover, submitted his suggestions "in order to be referred to the Committee of Detail."^b Now, Pinckney's whole plan had been formally referred to that committee on July 24.^c It is inconceivable that the methodical Madison should have reintroduced a portion of it, three or four weeks later, in order that it might be referred to the same committee. It is unlikely that Pinckney himself would have done so. The same unlikelihood must be urged against the provisions securing habeas corpus and freedom of the press and forbidding religious tests; for on August 20 Pinckney "submitted them to the House, in order to be referred to the Committee of Detail."^d

Concluding that to a considerable extent, and with more or less confidence, we can reconstruct the actual plan which Pinckney laid before the Convention on May 29, we may now turn, finally, to the question. If the document which Pinckney sent to John Quincy Adams was not his original draft, what was it? The question is really not a very difficult one. The similarity of the supposed draft to the final Constitution has constantly been noticed. Its resemblance to the report of the Committee of Detail is still closer.^e The differences from the latter consist, first, of some omissions or abbreviations of the less important passages, as of the tedious rule for deciding land disputes between two States; secondly, of some additions and alterations, almost all of which are recognizable fragments of the genuine Pinckney plan, or of Pinckney's later sugges-

^a Documentary History, III, 551. Both again joined in moving for the power to establish a university, on September 11; *id.*, 715.

^b *Ibid.*, 555.

^c *Ibid.*, 423, 443.

^d Documentary History, III, 565. The argument might seem weakened by the existence of the amendments which ensue, p. 566, regarding the cabinet; but these go into much more detail than, probably, was done in the plan. The motion for freedom of the press reappears, as made by Pinckney and Gerry, on September 11; Documentary History, III, 717. That for trial by jury in civil cases is made by the same two delegates on September 15; *id.*, 755.

^e This closeness of resemblance was noted by Sparks in a letter of November 14, 1831, to Madison; II. B. Adams, Jared Sparks, II, 529. The text of the report of the Committee of Detail given in the Journal, pp. 215-230, and (from Madison) in Documentary History, III, 441-458, is apparently more exact than those which are given (from Washington's and Brearley's copies) in the latter work I, 285-308, 335-358, where, in the attempt to represent the original print by large type and the manuscript additions by small letters, some errors seem to have crept in.

tions. Such are the peculiar provisions for the election of the Senate (Articles 4 and 10 of the so-called plan); those in Article 6 for a national university, for the establishment of a seat of government and for exclusive jurisdiction of Congress in its immediate area, for the proportioning of direct taxation to the whole population of the State (he had inserted the three-fifths rule in his plan, but had stated his personal preference for reckoning in the slaves),^a for the prohibition of religious tests, for liberty of the press, and for habeas corpus; that in Article 8, for the reeligibility of the President; and that in Article 11, securing to the national Congress a negative on State laws. All the rest does not amount to ten lines, or a thirtieth part of the document. Practically, in other words, the so-called Pinckney plan consists of the report of the Committee of Detail, as brought in on August 6, minus some of its lesser features, and plus some of those of his real plan. It is not possible to say that Pinckney answered Adams's request by sitting down and copying the printed report of the Committee of Detail, paraphrasing to a small extent here and there, and interweaving as he went along some of the best-remembered features of his own plan. But it is possible to declare that if he had done this the result would have been precisely like that which in fact he sent on to Washington.

Moreover, it is an ascertainable fact^b that in December, 1818, when the document was sent, he had still in his possession his printed copy of the report of the Committee of Detail, as secretly put in type for the use of the members on August 6, 1787; for in the letter to Adams which accompanies the draft he says:

I can assure you as a fact that for more than four months and a half out of five the power of exclusively making treaties, appointing foreign ministers and judges of the Supreme Court was given to the Senate, after numerous debates and consideration of the subject, both in Committee of the Whole and in the House. This I not only aver, but can prove by printed documents in my possession to have been the case.^c

By what printed document could such a point possibly have been proved in 1818, but by the printed report of the Committee of Detail? From the nature of the case there was no

^a Documentary History, III, 321.

^b *Scumble*, That a man may be trusted in casual and unintended indications in a letter, even though in its main purport it be deceptive.

^c Hunt, III, 23.

other. It is well known that several members carefully preserved their copies." It will perhaps be remembered that though Madison's final explanation, written down in connection with his notes, was that Pinckney's rough draft, marked with subsequent erasures and amendments, may have been the source of the document he supplied to the Secretary of State, his original conjecture, expressed in conversation to Sparks, is said to have been that Pinckney "had found a copy of the plan reported by the committee, with interlined amendments, perhaps proposed by him, and, at a distance of more than thirty years, had imagined it was his own plan." If the Committee of Detail is the committee meant, we may well accept, as our final result, the first half of this earliest conjecture.

But, it may be asked, may not another conclusion be drawn from the remarkable similarity observed between the document called the Pinckney draft and the report of the Committee of Detail? Is it certain that this is not due to the fact that the framers of the latter, who undoubtedly had Pinckney's plan before them, for it had been formally referred to them, based their work upon it, rather than upon the Virginia resolutions? The process by which one document is proved by internal evidence to be copied or derived from another is often a tedious one to expound or to read. In the present case it can be exhibited in an abridged form. We need not enter into a minute consideration of each phrase. Substantially the same results, in almost as convincing a form, can be shown by following the labors of the Committee of Detail through inspection of the order or succession of articles in certain documents.

There are five documents which show us practically all that we know of the work of the Committee of Detail. The first is the series of 23 resolutions confided to that committee on July 26, the text of which, gathered from the journals by Secretary Adams, is to be found in his edition of the Journal and in the first volume of Elliot.^a The second is that document in the handwriting of Edmund Randolph (and John Rutledge), members of that committee, which Mr. W. M. Meigs has

^a Bancroft, II, 119, 139; Ford, Bibliography, p. 3, No. 8.

^b Journal, pp. 207-213; Elliot, I, 221-223; Meigs, pp. 333-336. A copy of these resolutions, in James Wilson's handwriting, evidently put in form for the uses of the committee, exists among his papers in the library of the Historical Society of Pennsylvania.

conclusively proved^a to be a document prepared by Randolph soon after the committee was appointed, to aid its members in the task before them—the task of elaborating the 23 resolutions and filling in details. This document has been printed in facsimile by Mr. Meigs. The third and fourth of the five documents alluded to have not hitherto been printed. Their manuscripts exist among those papers of James Wilson, another member of the Committee of Detail, which are possessed by the Historical Society of Pennsylvania.^b The former, upon comparison with the Randolph manuscript, appears plainly to represent a later stage of the committee's deliberations, and to be the result of an endeavor to work out Randolph's suggestions and to give formal shape to his details. It is of so great interest that, by the kind permission of the officers of the society, it is printed in this series. (No. VIII, post.) The fourth document differs but little from the final result of the committee's work. It exhibits that work in a still later stage. That stage is so near the final one that it has not been deemed necessary to print the document *in extenso*, but a full statement of the differences between it and our fifth document is presented herewith (in No. VIII) immediately after the third. The fifth is, of course, the report of the Committee of Detail, a document often printed.^c Like the first, it consists of 23 articles, but they are different. Most of them, however, are to be found, more or less fully expressed, in the second, third, and fourth of the series.

These five documents, as has been said, enable us to trace in outline the history of the committee's work from the time of its appointment until, on August 6, it reported to the Convention. Now, without going into details respecting the text of the articles contained in them, let us merely consider what provisions, speaking generally, they contained, and in what order. Though it may give an abhorrent appearance to the page, this can most clearly and succinctly be done by denoting each provision by the number which it (or its amplified equivalent) bears in the articles and sections of the fifth and final document, the report of the Committee of Detail. Pur-

^aThe Growth of the Constitution, pp. 317-321.

^bI am greatly indebted to Mr. John W. Jordan, librarian of the society, for favoring me with copies of these two documents.

^cDocumentary History, III, 44-458; Journal of 1819, pp. 215-230; also in Doc. Hist., I, 285-308, 335-358, and in Elliot, I, 224-230; but see note c, on p. 123, *supra*.

suing this mode of expression, then, we should say that the first document, the resolutions referred to the committee, contains the following provisions, in the following order: II, III, IV, 1; IV, 2; VI, 9; V, 1; V, 3; V, 2; VI, 9; VI, 12; VII, 1; VIII, IV, 3; IV, 4; VII, 3; IV, 5; V, 1; X, VI, 13; XI, 1, 2, 3; XVII, XVIII, XIX, XX, XXII, V, 1. The second, the Randolph document reproduced by Mr. Meigs, contains the following: III, IV, 2, 3, 4, 1; VI, 1, 3, 6, 5, 9; IV, 7; VI, 8; V, 1, 3, 2 (VI, 3, 6, 5, 9, 8); VII, 1, 4, 5, 6; X, VI, 13; XI, XVII, XVIII, XX, XXII, XIX, XXI, XXIII. The third document, the first of the two Wilson drafts, runs thus if we follow the same system of notation and omit for the present from consideration certain extraneous matter which is found embedded in the manuscript: I, II, III, IV, 1-4; VII, 3; IV, 5-7; V, 1, 2; IX, 1; V, 3; VI, 12; VI, 3; V, 4; VI, 4, 1, 2, 6, 8, 5b, 9, 11, 10, 7, 5a (then other matter, of which anon); XVII-XX, XXII, XXI, XXIII, VI, 13; IX, 2; IX, 3. The fourth of our documents would be represented thus: I-VIII, XII, XIII, IX-XI, XVII, XVIII, XIV-XVI, XIX, XX, XXII, XXI, XXIII.

Not a little instruction might be derived from this record of the transmutations which our fundamental document, or its germ, underwent during these eleven days at the hands of the committee. But our present concern is only with its bearings on the problem of the Pinckney plan and specifically on the question—the last remaining question, it is submitted—whether the report of the Committee of Detail might not after all have been modeled on the Pinckney plan rather than the latter on the former. We have shown, by a somewhat mechanical device, what was the actual genesis of the committee's report. Let anyone who is not fatally repelled by the notation examine the results with care, and then consider the fact that the articles of the so-called Pinckney plan, so far as they extend (it has nothing corresponding to Articles XXII and XXIII), run in exactly the same order as those of the committee's report, and that indeed almost absolutely the same order of clauses is preserved within the individual articles. Then let any person who has ever attended a committee meeting, and who remembers the process by which an important document was ground out, ask himself what the chance is that a document which was one of several put into the

hopper on July 26 should, after such permutations as those above exhibited, emerge on August 6 as the final result of the committee's deliberations, with almost exactly the provisions with which it entered, and in almost exactly the same order. This, it should be observed, is an argument against the theory of wholesale copying from Pinckney. It does not militate against the supposition that the committee, having Pinckney's plan before them, may have borrowed from it some portions.

When all of this paper but the last four paragraphs had been written, there came to the writer a manuscript containing large portions of the original text of the long-lost Pinckney plan.

Then felt I like some watcher of the skies
When a new planet swims into his ken;

or, more exactly, like one before whose telescope appears an asteroid which pursues exactly the orbit that he had predicted. The manuscript alluded to was a copy of James Wilson's rough draft, discussed on the preceding pages, and printed in a later section (VIII). In the midst of it there was a manifest break in text and sense, followed by passages which were readily perceived to be excerpts from the Paterson plan. Then came a series of propositions which were not less easily identified as parts of the much-sought Pinckney plan. Then Wilson's rough draft was resumed at a later point than that at which it was interrupted. Investigation showed that in the volume of Wilson papers possessed by the Historical Society of Pennsylvania, from which the copy came, there are four sheets of manuscript pertaining to the work of the Committee of Detail. The fourth in the order of binding contains those resolutions of the Convention which were turned over to the committee at its appointment as the main basis of its work. The first and third are the first and third sheets of Wilson's rough draft, based on the Randolph paper presented by Mr. Meigs. Its second sheet is missing. In its place is sandwiched-in a half-sheet containing the excerpts from the New Jersey and Pinckney plans already mentioned. A possible reason for their being found at this point is that, in the main, they relate to what would naturally be the middle portion of Wilson's

draft. They relate for the most part to the powers of Congress, of the Executive, and of the Judiciary. These three matters had received little elaboration in the Virginia plan or in the twenty-three resolutions of July 26. It was natural that Wilson, in essaying the task of amplifying this portion of the scheme, should draw off such passages as were germane to it from the other two documents which, it will be remembered, had likewise been referred to his committee. At all events, this is what appears to have been done. The half-sheet is written with a finer pen than the sheets which precede and follow (though in Wilson's own hand) and with a different spacing. It is distinctly an interpolation, and will not be printed with the rest in section No. VIII. It is inserted here. First are given the extracts from the Paterson plan.

An Appeal for the Correction of all Errors both in Law and Fact.

That the United States in Congress be authorised—to pass Acts for raising a Revenue—by levying Duties on all Goods and Merchandise of foreign Growth or Manufacture imported into any Part of the United States—by Stamps on Paper Vellum or Parchment—and by a Postage on all Letters and Packages passing through the general Post-Office, to be applied to such foederal Purposes as they shall deem proper and expedient—to make Rules and Regulations for the Collection thereof—to pass Acts for the Regulation of Trade and Commerce as well with foreign Nations as with each other.^a

That the Executive direct all military Operations.

That the Judiciary have Authority to hear and determine all Impeachments of foederal Officers; and, by Way of Appeal, in all Cases touching the Rights of Ambassadors—in all Cases of Capture from an Enemy—in all Cases of Piracies and Felonies on the high Seas—in all Cases in which Foreigners may be interested in the Construction of any Treaty, or which may arise on any Act for regulating Trade or collecting Revenue.^b

If any State, or any Body of Men in any State shall oppose or prevent the carrying into Execution the Acts or Treaties of the United States; the Executive shall be authorised to enforce and compel Obedience by calling forth the Powers of the United States.

That the Rule for Naturalization ought to be same in every State.

These portions of the New Jersey draft require little explanation. The first line is a misplaced phrase from the end of the second article. The next paragraph is derived from that article and contains such important provisions in it as are not found in the twenty-three resolutions of July 26, which is just what we should expect upon the theory above suggested

^aThe margin adds: "to lay and collect taxes."

^bThe margin adds: "or on the Law of Nations, or general commercial or marine Laws."

as to the reasons for making these memoranda. Similarly, the next sentence contains the one provision of Paterson's fourth proposal which is not in the twenty-three resolutions. The next paragraph contains the most essential portions of Paterson's Article 5, in so far as these were not contained in the other or main document which the committee had before it; most of them, however, were in Randolph's plan. The provisions for coercion and for naturalization are, for similar reasons, copied out of the seventh and tenth of Paterson's articles.^a Then comes in the manuscript a space unusually wide, and then, obviously proceeding *per saltum* to the beginning of a fresh document, we read a longer group of extracts from the Pinckney plan.^b (The italics are not in the original, but are used for a purpose which will be explained later.)

The Legislature shall consist of two distinct Branches—a *Senate* and a *House* of Delegates, each of which shall have a Negative on the other, and shall be stiled the U. S. in Congress assembled.

Each House shall appoint its own Speaker and other Officers, and settle its own Rules of Proceeding; but neither the Senate nor H. D. shall have the Power to adjourn for more than Days, without the Consent of both.

There shall be a *President*, in which the Ex. Authority of the U. S. shall be vested. It shall be his Duty to *inform the Legislature of the Condition of U. S.* so far as may respect his Department—to *recommend Matters to their Consideration—to correspond with the Executives of the several States—to attend to the Execution of the Laws of the U. S.—to transact Affairs with the Officers of Government, civil and military—to expedite all such Measures as may be resolved on by the Legislature—to inspect the Departments of foreign Affairs—War—Treasury—Admiralty—to reside where the Legislature shall sit—to commission all Officers, and keep the Great Seal of U. S. He shall, by Virtue of his Office, be Commander in Chief of the Land Forces of U. S. and Admiral of their Navy. He shall have Power to convene the Legislature on extraordinary Occasions—to prorogue them, provided such Prorogation shall not exceed Days in the space of any . He may suspend Officers, civil and military.*

The Legislature of U. S. shall have the exclusive Power—of *raising a military Land Force—of equipping a Navy—of rating and causing public Taxes to be levied—of regulating the Trade of the several States as well with foreign Nations as with each other—of levying Duties upon Imports and Exports—of establishing Post-Offices and raising a Revenue from them—of regulating Indian Affairs—of coining Money—fixing the Standard of Weights and Measures—of determining in what Species of Money the public Treasury shall be supplied.*

^aAs numbered in the eleven-article texts; see p. 131, post.

^bImmediately upon discovering this document, I communicated it to the American Historical Review, and it was printed in the section devoted to documents, in the number for April, 1903 (VIII, 509-511).

The foederal judicial Court shall try Officers of the U. S. for all Crimes &c. in their Offices.

The Legislature of U. S. shall have the exclusive Right of instituting in each State a Court of Admiralty for hearing and determining maritime Causes.

The Power of impeaching shall be vested in the H. D. The Senators and Judges of the foederal Court, be a Court for trying Impeachments.

The Legislature of U. S. shall possess the exclusive Right of establishing the Government and Discipline of the Militia &c.—*and of ordering the Militia of any State to any Place within U. S.*

Since the preceding document follows Paterson so nearly verbatim, we are warranted in supposing that this, as far as it goes, is an accurate transcript. But what proves it to be Pinckney's plan? First, we have here a body of material plainly derived from two documents, and exactly meeting certain needs which we know, from the nature of the twenty-three resolutions of July 26, the Committee of Detail must have felt; one of the two is the second of the pieces which had been referred to them; it is most likely that the other is the third. Secondly, the more numerous house is termed "House of Delegates," the name which it bore in Pinckney's plan, according to Read's letter and Pinckney's "Observations," but in no other of the known projects. Thirdly, out of some forty provisions given in the text above, not one is in conflict with what we otherwise know of Pinckney's real plan, developed according to the method established on previous pages. It is impossible not to feel that the newly discovered document and the preceding investigation confirm each other to a remarkable degree; not to be gratified by so signal a corroboration, and not to regret that the whole plan can not be found."

The discovery of these documents shows that the reference of the New Jersey and Pinckney plans to the Committee of Detail was not, as has generally been assumed, a mere smothering of them. They were used. To what effect they were used may be seen by comparing them with some of those five papers which, as has been said, exhibit in successive stages the work of the Committee of Detail. Paterson's proposals for a power to levy duties on imports, to regulate commerce, to make uniform the rules for naturalization, to give the Executive the power to direct all military operations, and to

^a "W. S. E. of S. C.," in De Bow's Review, XXXIV, 63, and n. s. 1, 375, says that "The original draft, in his [Pinckney's] own handwriting, with notes and interlineations, was preserved among his papers," but implies that it perished in the Charleston fire of 1861.

give the Federal courts jurisdiction over cases relating to ambassadors, and his provisions for the return of fugitives from justice, all appear in the report of the Committee of Detail; but none of these are to be found in the twenty-three resolutions, though it must be said that the first two were in 1787 the commonplaces of constitutional reform. Pinckney's plan, among the forty provisions (roughly speaking) which are preserved to us in the text above, contains no fewer than nineteen or twenty that are to be found in the committee's report, but were not in the twenty-three resolutions referred to them at the beginning of their work, nor in the Virginia resolutions, nor in those offered by Paterson. They are marked by italics in the text above. Taken together, they constitute a noteworthy contribution for the youngest delegate to have made, and show that the labor he spent in drawing up a plan before the Convention began its work was not expended in vain.

In some cases we can trace the process by which these portions of Pinckney's scheme found their way into the committee's report. Thirteen of them are to be found in Mr. Meigs's facsimile of the Randolph draft, which stands second among the papers that mark the committee's progress. Of these, four, it is exceedingly interesting to observe (and also one respecting Indian affairs, which did not take effect), stand minuted in the margin or interlined in the text by the hand of John Rutledge, of South Carolina, colleague of Pinckney and representative of their State upon the committee.^a Another, though it does not appear in the Randolph draft, is found slipping from the margin into the text of Wilson's rough draft, the paper next in order of development.^b

It is perhaps sufficient to remark, in conclusion, that as a maker of the Constitution Charles Pinckney evidently deserves to stand higher than he has stood of late years, and that he would have a better chance of doing so if in his old age he had not claimed so much.^c

^a I refer to the words "to regulate weights and measures," in the margin of Mr. Meigs's Plate V, the words "and equip fleets," interlined in the text nearly opposite, and in the margin of Plate VI the phrases "to be commander in chief of the land and naval forces of the Union," and "shall propose to the legislature from time to time, by speech or message, such matters as concern the Union."

^b The provision that each house shall appoint its presiding officer.

^c Beside his "plan," we owe to his later suggestion the whole or part of Art. I, § 8, cls. 1, 8, 11, 17, § 9, cl. 2, and Art. VI, § 3, cl. 2.

VI. THE TEXT OF THE NEW JERSEY PLAN.

On the 15th of June, according to the journal of the Convention,^a "Mr. Paterson submitted several resolutions to the consideration of the House, which he read in his place, and afterwards delivered in at the secretary's table," and which have since been famous as the New Jersey or Paterson plan. But of this document, or series of resolutions, four different texts exist, and it can be declared with confidence that none of them precisely represents the original as presented on June 15.

In order to an intelligent investigation of these texts, it is necessary first to recall what has hitherto been known of the genesis of the document. On June 13 the Committee of the Whole had practically completed its report, based on the Virginia plan. On June 14—

Mr. Paterson observed to the Convention that it was the wish of several deputations, particularly that of New Jersey, that further time might be allowed them to contemplate the plan reported from the Committee of the Whole, and to digest one purely federal and contradistinguished from that reported plan.^b

The next day, June 15, he "laid before the Convention the plan which he said several of the deputations wished to be substituted in place of that proposed by Mr. Randolph." Madison states its origin thus:

This plan had been concerted among the deputations, or members thereof, from Connecticut, New York, New Jersey, Delaware, and perhaps Mr. Martin, from Maryland, who made with them a common cause on different principles.

Luther Martin, in his remarks before the Maryland legislature, definitely claims a share in its preparation, saying:

We then thought it necessary to bring forward the propositions which such of us who had disapproved the plan before [submitted?] had prepared. The members who prepared these resolutions were principally of the Connecticut, New York, Jersey, Delaware, and Maryland delegations. The Hon. Mr. Paterson, of the Jerseys, laid them before the Convention. Of these propositions I am in possession of a copy, which I shall beg leave to read to you.^d

^a Documentary History, I, 61, 65.

^b *Id.*, III, 123.

^c *Id.*, III, 124; Gilpin, II, 862, 863; Elliot, V, 191; Hunt, Writings of Madison, III, 165, 166.

^d Genuine Information, in Yates' Secret Proceedings, ed. 1821, p. 19; Elliot, I, 319.

Mr. Bancroft says that the informants of the English Government named Governor Livingston as the author.^a

Of the five texts which have been stated to be in existence it may be proper to take into consideration first that which is given by Madison. It is to be found in his notes as printed in the *Documentary History*,^b in Gilpin,^c in the fifth volume of Elliot,^d and in the third volume of Hunt's edition of the *Writings of James Madison*.^e It consists of nine articles. The first declares that the Articles of Confederation should be made adequate; the second gives Congress additional sources of revenue and the right to regulate commerce; the third proposes a new plan for the assessment and collection of requisitions; the fourth provides a plural Executive; the fifth a supreme Federal judiciary; the sixth makes the acts and treaties made by Congress the supreme law of the States; the seventh requires provision for the admission of new States; the eighth for uniform rules of naturalization; the ninth relates to the citizen of one State who commits offenses in another. This text we will call A.

Another, which may be called B, is that which is presented as an appendix to the official journal of the Convention, in the first volume of the *Documentary History*,^f is inserted in the text of that record in the *Journal of 1819*,^g and is taken from the latter into Elliot^h and Yates.ⁱ The manuscript from which it is copied is declared, in the *Journal of 1819*,^j to have been derived from Gen. Joseph Bloomfield, executor of David Brearley, and the fact that it is one of the Brearley manuscripts also appears in the pages of the *Documentary History*. As Brearley was a member of the New Jersey delegation, the paper might seem entitled to considerable authority. Its text, however, differs from that which we have called A in several particulars. To begin with, it has eleven articles instead of nine. Those which do not appear in A are the sixth

^a *History of the Formation of the Constitution*, II, 40, note 2. See Report on Canadian Archives for 1890, p. 101.

^b III, 125-128.

^c II, 863-867.

^d Pp. 191-193.

^e Pp. 166-170.

^f I, 319-323.

^g Pp. 123-127.

^h First ed., IV, 70-72; "second" (third) ed., I, 175-177.

ⁱ Ed. 1821, pp. 221-224.

^j Pp. 11, 123.

resolution, providing, as had been provided in the fourteenth article of Randolph's plan and in the eighteenth of the report of the Committee of the Whole, and in their exact language, "that the legislative, executive, and judiciary powers within the several States ought to be bound by oath to support the Articles of Union;" and the ninth resolution of B, which declares "that provision ought to be made for hearing and deciding upon all disputes arising between the United States and an individual State respecting territory." These are not unimportant provisions. Furthermore, in the fourth resolution, relating to the Executive, A provides that they shall be "removable by Congress on application by a majority of the executives of the several States," whereas B reads "removable on impeachment and conviction for malpractice or neglect of duty by Congress on application by a majority of the executives of the several States." This awkward provision wears plainly the aspect of an attempt to join, without fusing, two independent devices for getting rid of an unacceptable Executive. We shall be helped in understanding it if we observe a bit of the proceedings in Committee of the Whole on June 2. It was moved by one of the Delaware members, Dickinson, seconded by another, Bedford, both presumably concerned afterwards in concocting the Jersey plan, to add the words "to be removable by the National Legislature upon request by a majority of the legislatures of the individual States." This was voted down, Delaware alone voting in the affirmative. Then the committee proceeded to add the words which appear in the report of the Committee of the Whole: "to be removable on impeachment and conviction of malpractice or neglect of duty."^a The former of these two devices reappears, slightly modified, in text A of the resolutions prepared by the members from Delaware and the other small States. Both appear in B.

In reading the Journal of 1819 Mr. Madison's attention was arrested by these discrepancies. In a footnote to his record of the debates, inserted immediately after his nine-article text of the New Jersey resolves, he says:

This copy of Mr. Paterson's propositions varies in a few clauses from that in the printed journal furnished from the papers of Mr. Brearley, a

^a Documentary History, I, 206, 207; III, 48-51. Madison had himself suggested impeachment on the preceding day, June 1, in remarks which he does not report, but which are given by Pierce, *American Historical Review*, III, 321.

colleague of Mr. Paterson. A confidence is felt, notwithstanding, in its accuracy. That the copy in the journal is not entirely correct is shown by the ensuing speech of Mr. Wilson (June 16), in which he refers to the mode of removing the Executive by impeachment and conviction as a feature in the Virginia plan, forming one of its contrasts to that of Mr. Paterson which proposed a removal on the application of a majority of the executives of the States. In the copy printed in the journal the two modes are combined in the same clause, whether through inadvertence or as a contemplated amendment does not appear.^a

The remarks of Wilson to which Madison alludes occur in the course of a series of contrasts which Wilson draws between the two plans. That the point which Madison makes in this footnote is well taken appears not only from his own report of what Wilson said, but from such other reports as have come down to us.^b In his series of parallels, Wilson says that in the Virginia plan the Executive is to be "removable on impeachment and conviction," in the other to be "removable at the instance of a majority of the executives of the States." So far, then, the evidence is in favor of text A.

But the little manuscript book already spoken of as preserved among Judge Paterson's papers contains his own version of his resolutions, and this text agrees in every substantial particular with B.^c It contains the two additional articles, the sixth and the ninth of B's numbering, and it presents the same provisions as are given by B with respect to the removal of the Executive. But the manner in which it presents them is interesting, and may explain the form in which they appear in the Brearley version, B. The resolutions are given on the right-hand pages of the book. Certain phrases accidentally omitted in copying are given with asterisks on the left-hand pages, other asterisks marking the places of their insertion on the right-hand pages. But in this instance of the fourth article, we have, without asterisks, on the right-hand page the words, "and removeable on Impeachment and Conviction for Mal-Practice, or Neglect of Duty," and opposite them on the left-hand page the words "by Congress on Application by a Majority of the Executives of the several States." Thus placed, the two phrases have the appearance of being alter-

^a Documentary History, III, 128; Hunt, III, 170.

^b Ibid., III, 133; Gilpin, II, 872; Elliot, V, 195; Hunt, III, 176; Yates, p. 126, and Elliot, I, 414. Paterson's notes in George Bancroft's copies at the Lenox Library, p. 182.

^c Paterson has "subjects" in the seventh resolution, where Brearley has "subjects" stricken out and "citizens" written instead.

native proposals, upon which the coterie who framed the resolutions had not come, according to Paterson's subsequent memory, to a definite conclusion. It would have been likely that this should be the case, if the Delaware members had preferred the one form, while the rest had acquiesced in that which we see in the report of the Committee of the Whole.^a If in Brearley's copy the alternative gloss had crept from the margin into the text which Wilson knew, the form which we find in Article 4 of B would be accounted for.^a That the representatives of the smaller States were not disposed to be rigid about all details of their plan is evidenced by Dickinson's remark on June 19, when the discussion of the two plans was almost concluded, that he supposed there were good regulations in both, and that the committee might do well, after comparison, to consolidate such parts of them as they might approve.^b

But it would be idle to dispute whether A or B is to be preferred, in view of the fact that neither of them can possibly be the original text of the resolutions brought in by Paterson on June 15. This can be demonstrated from the journal of the Committee of the Whole for June 18, when, the New Jersey propositions being under discussion, Dickinson moved "to postpone the consideration of the first resolution submitted by Mr. Paterson, in order to introduce the following, namely," or (as we may read in words deleted by the secretary but still preserved in the manuscript) —

to substitute the following resolution in the place of the first resolution submitted by Mr. Paterson, namely, *Resolved*, That the Articles of Confederation ought to be revised and amended, so as to render the Government of the United States adequate to the exigencies, the preservation, and the prosperity of the Union.

Dickinson's motion was rejected June 19. It was then voted "to postpone the consideration of the first proposition offered by Mr. Paterson."^c Obviously, then, Paterson's first resolution and this declaration proposed by Dickinson were two different things. Yet in both A and B what is set down as the first of the Paterson resolutions is almost exactly identical with this vote proposed by Dickinson—so nearly the same in

^a I am informed by Mr. Allen, chief of the bureau of rolls and library, that Brearley's manuscript runs continuously and without interpolation at this point.

^b Yates, p. 140; Elliot, I, 425.

^c Documentary History, I, 224, 225.

phraseology that no sensible man, at so important a crisis for the smaller States, would have cared to suggest the slight alterations. There is, moreover, a significant passage in Luther Martin's *Genuine Information*,^a in which he says:

Nay, so far were the friends of the system [meaning the Virginia plan] from pretending that they meant it or considered it as a Federal system, that on the question being proposed, "that a union of the States, merely Federal, ought to be the sole object of the exercise of the powers vested in the convention," it was negatived by a majority of the members.

No motion expressed in these words is to be found in the journal of the Committee of the Whole. Careful search seems to show that what he says can have reference to nothing else than the rejection, on June 19, of Paterson's first resolution. As we have seen, the resolution which stands first in the current texts can not have been the first. The words which Martin quotes would be wholly appropriate to an introductory article. None but the first of Paterson's propositions, whatever they were, was ever brought to a distinct vote and separately rejected. It is probable, then, that here in these words of Martin we have the first of the New Jersey resolutions, alluded to but not quoted in the journal.

But it is now time to invoke the text which we shall call C. It is to be found in two periodicals contemporary with the days of the Convention—the *Maryland Gazette* or *Baltimore Advertiser*,^b of February 15, 1788, and Carey's *American Museum*.^c It will be remembered that Luther Martin, one of those who took part in drawing up the plan, had a copy of it which he read, or at any rate offered to read, to the Maryland assembly when giving them his "genuine information." Now, the series in the *Maryland Gazette* is headed with the words: "Resolves proposed to the Convention by the Honorable Mr. Paterson, and mentioned in Mr. Martin's Information to the House of Assembly." It is likely that the printer got his copy from Martin. The text in the *American Museum* gives no indication of its provenance.

But whatever the origin of C, its peculiarities are interesting. In the first place, it consists of no less than sixteen

^a Yates, p. 42; Elliot, I, 362.

^bNot to be confounded with the *Maryland Gazette* published at the same time at Annapolis. I am indebted to Mr. Porter Hollis of the Johns Hopkins University for kindly copying for me this text.

^cIII, 362, 363.

articles, and the first of these is that identical resolution the existence of which we have been led to suspect from Martin's reminiscence, and which almost certainly was the one voted down in committee on June 19. It is expressed in exactly the words quoted by Martin.^a Article 2 is Dickinson's substitute, which we can be sure was not a part of the original. The other articles, with a single exception, correspond to those of B, but with a different order and with some subdivision.^b That exception, Article 14, is almost as interesting as Article 1. It reads: "*Resolved*, That it is necessary to define what offenses committed in any State shall be deemed high treason against the United States." Now, not only is this interesting on account of its intrinsic importance, but it occurs, crossed out, in the corresponding position in the series written down in Judge Paterson's little book. This may make us doubtful whether it was in fact laid before the Convention, and so again skeptical as to C's being the genuine original text, as submitted on June 15. In the passage on the removal of the Executive,^c the reading of C is simply, "removable on impeachment and conviction for malpractice, corrupt conduct, and neglect of duty."

The fourth text, which we may call D, need not long detain us. In the appendix to the first volume of the Life and Correspondence of Rufus King,^d among some notes which he wrote out about 1818-1821, there appears a series of seven articles, briefly summarized, headed, "Quere if Paterson's Project." The next words run: "The powers of the Convention only authorize the enlargement of the provisions of the Confederation, viz." These words point to both the first article of C and its second, the first of A and B. The seven articles which follow correspond, in the same order, to Articles 2-6, 8, and 9 of A. The text is obviously too much abbreviated, too plainly derivative, to have much independent authority. Its reading as to the removal of the Executive is: "removable by Congress on application of a majority of the state executives," the reading of A, for which Madison contended and which Wilson's speech supports.

^aSave "this Convention" where he says "the Convention."

^bArt. 2=1 of B; Art. 3=2 of B; Arts. 4, 5=3 of B; Arts. 6, 7=4 of B; Arts. 8, 9=7 of B; Art. 10=5 of B; Art. 11=6 of B, which, it will be remembered, is not in A; Art. 12=9 of B, of which the same is true; Art. 13=8 of B; Arts. 15 and 16=10 and 11 of B, respectively.

^cAt the end of article 6.

^d11p. 690, 601.

But if we are obliged to leave in some doubt the question of the exact text of the New Jersey resolutions, it may be possible for us to cast some light on their genesis by the use of certain papers preserved by Judge Paterson.^a Those to which allusion is made and which are really significant are two in number. Each is written in Paterson's handwriting on a single sheet of foolscap. One of these, plainly the earlier one, consists of five articles, and may not improbably, for reasons which will appear, be attributed to John Lansing, jr., of New York, who, we may infer from the remarks of Madison and Martin, took part with the members from the small States in the preparation of the Jersey plan. Its first resolution is that declaration for a union merely federal which, as we have seen, stood at the head of the genuine Paterson resolutions and was rejected by the Convention. On that very account, perhaps, it is here crossed out. Its second article is that which Dickinson, on June 18, moved as a substitute for the preceding and which stands as the first resolution in A and B and the second in C. Its third article, "that the Federal Government of the United States ought to consist of a supreme legislative, executive, and judiciary," is practically the vote of the Committee of the Whole on May 30,^b at the beginning of its deliberations, but with the important substitution of "Federal" (that shibboleth of the particularists)^c for "national." The fourth article is to the effect "that the powers of legislation ought to be vested in Congress." This no doubt means vested in a Congress organized like the present Congress of the Confederation, as distinguished from the bicameral body proposed by the Committee of the Whole. This resolution does not appear in the printed texts. But on June 16 one of the group who prepared the New Jersey plan, Ellsworth, proposed "that the legislative power of the United States should remain in Congress." "This," says Madison, "was not seconded, though it seemed better calculated for the purpose than the first proposition of Mr. Paterson, in place of which Mr. E. wished to substitute it."^d Again, on June 20, it was moved by Lansing and sec-

^aFor these I am indebted to the kindness of Mr. Noah F. Morrison, of Elizabeth. There are copies among the Bancroft MSS., at the Lenox Library.

^bDocumentary History, I, 200.

^cYates, pp. 42, 43.

^dDocumentary History, III, 136; Hunt, III, 179. The motion does not appear in the journals.

ended by Sherman, two others of the group, to postpone the consideration of the second resolution of the Committee of the Whole, in order to take up the following: "*Resolved*, That the powers of legislation be vested in the United States in Congress."^a Accordingly this provision, though it seems to have dropped out from the plan before the final framing, was one to which several of the framers were attached, and had a natural place in a preliminary sketch.

The fifth and last article of this incomplete sketch deals with additions to the powers of Congress, over and above those which the Articles of Confederation had conferred upon it. It closely resembles the article on this subject which we find in the printed series, and resembles it in such a way as to be almost certainly its prototype. This can probably not be made clear without quoting it. It reads:

Resolved, That in Addition to the Powers vested in the United States in Congress by the present existing Articles of Confederation, they be authorised to pass Acts for levying a Duty or Duties on all Goods and Merchandize of foreign Growth or Manufacture imported into any Part of the United States not exceeding per Cent. ad Valorem to be applied to such federal Purposes as they shall deem proper and expedient, and to make Rules and Regulations for the Collection thereof; and the same from Time to Time to alter and amend in such Manner as they shall think proper, *Provided*, That all Punishments, Fines, Forfeitures and Penalties to be incurred for contravening such Rules and Regulations shall be adjudged and decided upon by the Judiciaries of the State in which any Offence contrary to the true Intent and Meaning of such Rules and Regulations shall be committed or perpetrated; subject nevertheless to an Appeal for the Correction of any Errors in rendering Judgment, to the Judiciary of the United States.

That the United States in Congress be also authorized to pass Acts for the Regulation of Trade as well with foreign Nations as with each other, and for laying such Prohibitions and such Imposts and Duties upon Imports as may be necessary for the Purpose; *Provided*, That the Legislatures of the several States shall not be restrained from laying Embargoes in Times of Scarcity; and provided further that such Imposts and Duties so far forth as the same shall exceed per Centum ad Valorem on the Imports shall accrue to the Use of the State in which the same may be collected.

If all this be compared with Article 2 of A or B, it will be plainly seen that it is the original of the latter, or represents an early stage in its elaboration. In the margin stand the words "Imposts, Excise, Stamps, Post-Office, Poll Tax," evi-

^a Documentary History, I, 67, 68.

dently minuted as suggestions of further sources of federal revenue to be considered; and the final draft, though, as might be expected, it avoids the excise and the poll tax, inserts after the mention of revenue by duties on imports the words "by stamps on paper, vellum or parchment, and by a postage on all letters or packages passing through the general post-office." Attention may be called to the close relation between these proposals and the revenue proposals of 1781 and 1783 and the project of 1784 for the regulation of commerce. In short, we have in this document a *Vorschritt* for the New Jersey plan, drawn up by a man or men who were willing to go but little beyond those rejected and insufficient schemes.

Either no more was written of this paper or Paterson copied no more. The other paper extends farther and seems to mark a later stage in the process. Its first article is that which we ultimately find as the first of A and B. Its second insists that the amendments resolved on by the Convention should be submitted to Congress and to each State, after the fashion prescribed in Article 13 of the Confederation. Articles 3 and 4 are the same as those of the shorter paper. The numbers 5, 6, and 7 are left with blanks in the text. This is done to save copying; for in the margin, against 5, we read, "See Mr. Lansing;" against 6, "See Gov. Randolph's 7th Prop'n;" against 7, "Same, 9th." Now, since in the finished document, at least according to texts A and B, we find at this point a resolution relating to the additional powers to be conferred on Congress, then (after that on requisitions) one on the executive which closely resembles Randolph's seventh resolution, then one on the judiciary, which closely follows his ninth, it is not illegitimate to infer that the fifth article of the shorter paper, whose text we have quoted and on which the article on the powers of Congress in the final document was plainly modeled, is here alluded to as the work of John Lansing, of New York. The eighth and ninth articles, assertions of the equality of the States in sovereignty and independence and of their consequent right to equal representation in the supreme legislature, need not detain us. The part which such assertions played in the transactions of the Convention is well known. The two papers under discussion have their main interest as preparatory sketches for the completed New Jersey plan, the general nature of which is after all ascertainable, and

as helping to explain its development. It was doubtless a joint product." It may be remembered, by the way, that Ellsworth, Paterson, and Luther Martin were fellow-students at Princeton and companions in founding the Philosophic Society.

VII. THE TEXT OF HAMILTON'S PLAN.

In any discussion of Hamilton's formal suggestions for the proposed Constitution of the United States, it is important to keep in mind the distinction between the brief outline which he read in connection with his important speech of June 18 and the longer and more elaborate plan which, near the end of the sessions of the Convention, "was placed in Mr. Madison's hands for preservation by Colonel Hamilton, who regarded it as a permanent evidence of his opinion on the subject."^a

Of this longer document Madison returned the original, from which it was printed in Hamilton's Works,^c and kept a copy, from which it was printed by Gilpin^d and by Elliot,^e and more recently in the Documentary History^f and in Hunt's Writings of James Madison.^g The text of all these is the same, and not at the present day a matter of controversy. One detail, however, was a hundred years ago a matter of vivid dispute, and may deserve a passing notice. It having been alleged "in a Jacobin meeting at Salem"^h that Hamilton had proposed that the president and senate should be chosen for life, Timothy Pickering wrote to him requesting information on the point. Hamilton replied in a letter of September 16, 1803, admitting that he had proposed a tenure during good behavior for president, senate, and judges, but declaring that his final opinion in the Convention had been reversed, so far as the executive was concerned.

^a See, also, p. 150, *infra*; and, for the use made of the New Jersey resolutions in the Committee of Detail, p. 129, *supra*.

^b Gilpin, III, xvi. Mr. Lodge seems really to suppose the longer document to have been laid before the Convention at the same time with the shorter, when he says: "Works of Hamilton, I, 351 n.": "Many of the clauses of the existing Constitution would seem to have been taken exactly from Hamilton's draft."

^c J. C. Hamilton's edition, II, 395-409. The original is now in the Astor Library.

^d III, xvi-xxviii.

^e V, 584-590.

^f III, 771-788.

^g III, 197-209. Madison had at some time furnished Jefferson with a copy of this paper. See his letter of July 17, 1810 (Letters, II, 181), written under the apprehension that he had lost his own copy.

^h Pickering to Hamilton, April 5, 1803, 6 Mass. Hist. Soc. Coll., VIII, 179.

In the plan of a constitution, which I drew up while the Convention was sitting, and which I communicated to Mr. Madison about the close of it, perhaps a day or two after, the office of president has no greater duration than for three years.^a

Madison in one of his letters, in which he is discussing the disputed numbers of the "Federalist," animadverts upon this as a signal instance of the fallibility of Hamilton's memory;^b for the tenure is during good behavior both in the Madison copy and in that found among Hamilton's papers.^c

But it is the briefer sketch read on June 18 which more concerns us. It obviously has more in common with the projects laid before the Convention in its early days by Randolph, Pinckney, and Paterson than has the finished document which Hamilton drew up when all discussion was ended. And yet it stands on a somewhat different basis from these. It was never formally proposed to the Convention, and of course never referred to a committee; in a sense, it was but a portion of a speech. Its author, at the time when he read it, stated, according to Madison's report, that—

he did not mean to offer the paper he had sketched as a proposition to the committee. It was meant only to give a more correct view of his ideas, and to suggest the amendments which he should probably propose to the plan of Mr. R. in the proper stages of its future discussion.^d

To the same purport Madison says, in a letter to John Quincy Adams:

Colonel Hamilton did not propose in the Convention any plan of Constitution. He had sketched an outline which he read as part of a speech, observing that he did not mean it, etc.^e

But though laid before the Convention so informally, Hamilton's paper was regarded by his colleagues with so much interest that we have eight different texts of it from copies kept by at least six different members of the Convention.

^a Niles's Register, III, 148; Pickering's Review, pp. 172-173 (120-121 of second ed.); Pitkin, II, 259-260; Works, ed. Hamilton, VI, 556; J. C. Hamilton, Life of Alexander Hamilton, II, 518; *id.*, History of the Republic, III, 343, 345. At p. 343 of the latter is a similar statement made by Hamilton in print during his lifetime.

^b To James K. Paulding, April, 1831. Letters, IV, 177. So also in Gilpin, III, xvi.

^c J. C. Hamilton's note, Republic, III, 345, is singularly inept; he says, regardless of what he had printed in Hamilton's Works, II, 401, sec. 9, "the term of three years is in the second plan."

^d Documentary History, III, 149; Gilpin, II, 889, 890; Hunt, III, 191.

^e Letter to J. Q. Adams, November 2, 1818. J. C. Hamilton's History of the Republic, III, app. iii; Hunt, III, 209. J. C. Hamilton labors (*ibid.*, 301 n.) to show that Madison contradicted himself on this point, but on the whole without success.

Presumably all these were written in the members' own handwriting, according to the practice described on a previous page, at the beginning of our study of the Virginia resolutions. In most cases we know that this was the fact. These texts manifest considerable differences in certain articles.

First of all (A) we have Hamilton's own text, in eleven articles, as printed in his works.^a The manuscript from which it was printed was found among his papers. Next (B) we have Madison's. Madison says that his report of the speech, in connection with which this plan was read, was revised by Hamilton, but his phrase does not necessarily imply that this was true of his text of the plan.^b The latter is printed in Gilpin,^c in Elliot,^d in the third volume of the Documentary History,^e and in Hunt's Madison.^f Thirdly, there is Brearley's copy (C), which General Bloomfield handed over to Secretary Adams, with the other papers mentioned on previous pages as derived from him, in May, 1818.^g This is printed in the Journal of 1819,^h in Elliot,ⁱ and in the first volume of the Documentary History.^j Fourthly, there is Paterson's copy (D), in his handwriting, which is contained in the small manuscript book already mentioned in these pages, and temporarily lent to the present writer. Fifthly, Read's Life of George Read presents a text in *nine* articles (E), "from a copy in Mr. Read's handwriting."^k It will be remembered that George Read, perhaps alone among the members of the Convention, expressed full approval of Hamilton's suggestions.^l The eleven articles are reduced to nine by the omission of the second and the consolidation of the fourth and fifth into one. Yates's minutes contain a summary of the plan, which, though very brief, is of interest and has an inde-

^a Ed. Hamilton, II, 333-335; ed. Lodge, I, 331-333.

^b Hunt, II, 411, III, 182; Gilpin, II, 892; Trist's memorandum in Randall's Jefferson, III, 591.

^c II, 890-892.

^d V, 205.

^e III, 149-151.

^f III, 194-197.

^g Letter of Adams, in Hamilton's Republic, III, app. p. ii; Journal, p. 130.

^h Pp. 130-132.

ⁱ I, 179-180.

^j I, 321-326.

^k Pp. 153, 154.

^l Documentary History, III, 212, 213, 217, 240.

pendent origin." Of the seventh and eighth texts, we may postpone our consideration for a few pages.

Among these six texts there are considerable variations, though Paterson's (D) is precisely like Brearley's (C). If there were no reasons to the contrary in any case the presumption would be in favor of assigning a superior authority to the copy found in Hamilton's own handwriting. But documents are often retouched, and we have seen how insecure such reasoning would be in the case of Pinckney or even of Paterson. Let us, then, study the variations. They occur in the text of the fourth, seventh, eighth, and ninth of Hamilton's eleven proposals.

In the fourth article, which relates to the executive, the variations are in that part which prescribes the (indirect) mode of his election. Text A provides for "his election to be made by electors chosen by electors chosen by the people in the election districts aforesaid," meaning the single-member districts arranged for the choice of senators. That is to say, it provides not that his election shall be secondary, but that it shall be, if the phrase is permissible, a tertiary election. An alternative is provided, which appears in no other of the texts, namely, "or by electors chosen for that purpose by the respective legislatures"—an election still tertiary. The Bloomfield and Paterson texts (C, D), though they do not give the second member of this alternative, agree exactly with the phraseology of the first. In Madison's text the process becomes simply that of secondary election—"the election to be made by electors chosen by the people in the election districts aforesaid." Read's text (E) agrees with this. That of Yates seems to support it. He writes, "Let electors be appointed in each of the States to elect the Executive;"^b but this brief phrase does not necessarily rule out the wording of A nor absolutely sustain that of B. Arguments from one or another of these texts derived from expressions used in the subsequent debates seem to be lacking. The longer and more intricate form in which A provides for the presidential election is sustained by the more elaborate plan which Hamilton

^a Secret Debates, ed. 1821, pp. 136, 137; Elliot, I, 423, with a difference, to be noted below.

^b Elliot, I, 423, changes the last word to "legislature," which the context shows to be erroneous. It should be remembered that the plan printed in the appendix to Yates is simply copied from that in the Journal of 1819, and has no independent authority,

showed to Madison in September, for this provided for a tertiary rather than a secondary election," and it is easy in copying to omit one of two similar phrases when the repetition is not perfectly well known to be intentional. On the other hand, it is not easy to imagine that the alternative method which is suggested in A was really in the document read on June 18, yet escaped all notice on the part of all five, or at any rate four, of those whose versions have come down to us.

In the seventh article, relating to the judiciary, the number of judges in the Supreme Court is left blank in B, C, D, and E, whereas in A the blank is filled with the word twelve. Much the most probable conclusion is that the document originally read had a blank at this point, which Hamilton subsequently filled in with the number. In his longer plan he provides for a court of from six to twelve judges.

The eighth article of A reads:

The Legislature of the United States to have power to institute courts in each State for the determination of all causes of capture and of all matters relating to their revenue, or in which the citizens of foreign nations are concerned.

In B, in C, in D, and in E (art. 6), we find a less specific definition of their jurisdiction: "for the determination of all matters of general concern." It would be natural, according to the usual rules respecting copying, to suppose that the more specific phrase was the original, the more general derivative; but this presumption is much weakened when we find four independent texts agreeing exactly in their phrasing of this provision.

Finally, in the ninth article, the various texts differ markedly in respect to the composition of the court for trying impeachments. Text A provides that they shall be tried by a court consisting "of the judges of the Federal Supreme Court, chief or senior judge of the superior court of law of each State." The others make no mention of the judges of the Federal Supreme Court. Once they were introduced, it is easy to see why the blank in Article 7 should be filled with the word twelve, lest in impeachments of Federal officers they be quite outnumbered by the thirteen chief justices of the States, or so many of them as could attend. But B, C, D, and E, while they confine the tribunal to the State judges, have minor

variations in their definition of them. B, in the Documentary History, reads, "to consist of the chief or judge of the superior court of law of each State;" in Gilpin and in Hunt, "of the chief or judge;" E, "chief or judges;" C and D, like A, "chief or senior judge." It is not difficult to imagine that, if the writer did not feel perfectly acquainted with the judicial systems of all the States, and therefore could not in advance of discussion decide what phrase should be used to cover the case of States which did not precisely have a chief judge, he might at first write "chief or judge," and afterward fill in the blank with the word "senior." In Hamilton's longer plan, the court for the trial of impeachments in the case of the higher officials is composed of the Supreme Court of the United States, (which, it will be remembered, was to consist of from six to twelve judges), plus the chief or senior judge of each State, any twelve to constitute a court.

The seventh and eighth texts have been postponed. It is now wise certain that they have an independent origin. In the first volume of "Porcupine's Works," published by William Cobbett in May, 1801, he tells us that "the plan of a Constitution, which Mr. Hamilton * * * proposed to the Convention, has since been published by his enemies, with a view of destroying his popularity and influence."^a He then reprints a text of it, which differs only in two small particulars from Madison's (B)—the blank in the seventh article is simply closed up, which is doubtless a mere typographical error; and in the description of the impeachment court the reading is "Chief justice, or judge of the superior court of law," etc. I have not been able to discover Cobbett's source. It would have some interest, as the earliest printed text of Hamilton's plan, or of any of the plans submitted to the Convention, except Paterson's. Cobbett's, however, was printed during Hamilton's lifetime; and so was our eighth text, which is found in a pamphlet entitled "Propositions of Colonel Hamilton of New York, in the Convention for establishing a Constitutional Government for the United States," printed at Pittsfield, Mass., by Phineas Allen, in 1802.^b This differs in no respect from Porcupine's, save that in the phrase last cited the read-

^aP., 89.

^bThere is a copy in the library of the New York Historical Society. I am greatly indebted to Mr. Robert H. Kelby, librarian of that society, for kindly furnishing me a transcript.

ing is "Chief judge or judge." It is impossible at present to say whether either of these, agreeing so closely with Madison's text, has any other source than his manuscript.

Whatever the probabilities in any of these individual cases of variation, it is perhaps sufficiently shown that in respect to Hamilton's suggested plan we have hardly more warrant than in the case of the Virginia or New Jersey resolutions or Pinckney's plan for declaring with confidence that any one of the variant texts represents exactly the original document which was brought before the Convention.

In the late Paul Ford's Bibliography of the Constitution of the United States^a mention is briefly made, against Hamilton's name, of a plan of government printed in the Massachusetts Centinel for June 23, 1787. The attribution is erroneous.^b The piece in question bears no signature or other indication of authorship. It is entitled simply "Sketch of a Federal Government." It is formed upon principles differing widely in several respects from those which Hamilton is known at that time to have entertained.^c It provides for a legislative assembly consisting of five members from each State, chosen annually, and having the power to levy excise duties as well as duties on imports and exports; if the amount thus raised were insufficient, resort should be had to requisitions. There was to be an executive council of one member from each State, chosen triennially, which should have a veto, superable by a two-thirds vote, upon the acts of this assembly. Appointments were to be made upon a triple nomination on the part of the executive council by a committee of one member of the assembly from each State. A council of revision, consisting of the Secretary of Foreign Affairs, the Secretary of War, the commissioners of the Treasury, and first judge of the admiralty, with appeal to a two-thirds vote of the assembly, was to exercise in the national interest a control over the legislation of the States. The States were to have no power to emit money of any kind.

All this is interesting, but not highly important; not as important, certainly, as (to cite a document of somewhat the

^a P. 48.

^b I wrote to Mr. Ford about this some years ago. He was unable to say with certainty from what source he had derived his attribution of the plan to Hamilton.

^c For a copy of the sketch I am indebted to my father, John Jameson, esq., of Boston.

same class) the body of suggestions found among the papers of Roger Sherman, and printed by Jeremiah Evarts in his sketch of Sherman in Sanderson's *Lives of the Signers*.^a It is, by the way, not at all impossible that this last document, to which Mr. Bancroft attaches so high an importance,^b may have been a portion of the Connecticut delegates' contribution to those consultations of the members of the small States, out of which, as we have already seen, the New Jersey resolutions originated. There is nothing in its provisions inconsistent with this theory; and the suggestion is fortified by the presence of blanks in the declaration, "That the eighth article of the confederation ought to be amended agreeably to the recommendation of Congress of the — day of ——" For a document prepared at leisure by Sherman it would have been easy to hunt down the date, April 18, 1783, and insert it. For a paper prepared upon a sudden exigency and when he was remote from his own books, it might have been necessary to leave the date blank. The original of the paper seems to be no longer extant.

VIII. THE WILSON DRAFTS FOR THE COMMITTEE OF DETAIL.

The original manuscripts of the two papers which follow are found among the papers of James Wilson possessed by the Historical Society of Pennsylvania. They are wholly in his handwriting. For some consideration of their character, and of their relations to the Report of the Committee of Detail, see pages 126-130, *supra*. For copies of them the writer is indebted to Mr. John W. Jordan, librarian of the society. The first, which in the original has received its present shape through many interlineations and other alterations, is here printed for the first time, and at full length, so far as preserved. The portion now extant consists of two sheets, evidently the first and third of three. The second, which must have contained statements as to the powers of Congress, the organization and powers of the executive and judiciary, is missing. In the text which follows, under A, the origin of each clause is indicated by references, in square brackets, to the clause from which it was derived, directly or with modi-

^a II, 12-41.

^b Formation of the Constitution, II, 37.

fications. These references point, when it is possible, to the corresponding passages in the twenty-three resolutions of the convention referred to the committee, to the Paterson plan (text in eleven articles), and to the Pinckney plan as presented on pages 130, 131, *supra*—the three documents directly referred to the committee. In the case of provisions not found in any of these three, reference is made (by the word “Randolph” and the number of plate and clause in Mr. Meigs’s facsimile text) to the draft in Randolph’s handwriting which shows the earlier processes of the committee’s work; or to other sources when this gives no aid.

Of the second of Wilson’s drafts (B), it has been thought sufficient to print a statement of its divergences (which are few) from the text of the final report.

A.

We the People of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina and Georgia do ordain declare and establish the following Constitution for the Government of ourselves and of our Posterity. [Original.]

1.

The Style of this Government shall be the “United People and States of America.” [Articles of Confederation, I.]

2.

The Government shall consist of supreme legislative, executive and judicial Powers. [Resolutions, I.]

3.

The legislative Power shall be vested in a Congress to consist of two separate and distinct Bodies of Men, a House of Representatives, and a Senate, each of which shall in all Cases have a Negative on the other. [Resolutions, II, and Pinckney.]

4.

The Members of the House of Representatives shall be chosen every second year by the People of the several States comprehended within this Union. The Qualifications of the Electors shall be prescribed by the Legislatures of the several States; but their Provisions concerning them may at any Time be altered and superseded by the Legislature of the United States. [Resolutions, III; Randolph, III, II.]

Every Member of the House of Representatives shall be of the Age of twenty five Years at least; shall have been a Citizen in the United States

for at least three Years before his Election, and shall be, at the Time of his Election, a Resident of the State, in which he shall be chosen. [Resolutions, III; Randolph, II, 5.]

The House of Representatives shall, at its first Formation and until the Number of Citizens and Inhabitants shall be taken in the Manner herein-after described, consist of 65 Members, of whom three shall be chosen in New-Hampshire, eight in Massachussets, &c. [Resolutions, VIII.]

As the Proportions of Numbers in the different States will alter from Time to Time; as some of the States may be hereafter divided; as others may be enlarged by Addition of Territory, or two or more States may be united; and as new States will be erected within the Limits of the United States; the Legislature shall, in each of those Cases, possess Authority to regulate the Number of Representatives by the Number of Inhabitants, according to the Provisions herein after made. [Resolutions, VIII.]

Direct Taxation shall always be in Proportion to Representation in the House of Representatives. [Resolutions, VIII.]

The Proportions of direct Taxation shall be regulated by the whole Number of white and other Free Citizens and Inhabitants of every &c. which Number shall, within six Years after the first Meeting of the Legislature, and within the Term of every ten Years afterwards, be taken in such Manner as the said Legislature shall direct. [Resolutions, IX.]

From the first Meeting of the Legislature until the Number of Citizens and Inhabitants shall be taken as aforesaid, direct Taxation shall be in Proportion to the Number of Representatives chosen in each State. [Resolutions, VIII.]

All Bills for raising or appropriating Money and for fixing the Salaries of the Officers of Government shall originate in the House of Representatives, and shall not be altered or amended by the Senate. No Money shall be drawn from the public Treasury but in Pursuance of Appropriations that shall originate in the House of Representatives. [Resolutions, X.]

The House of Representatives shall be the grand Inquest of the Nation; and all Impeachments shall be made by them. [Pinckney.]

Vacancies in the House of Representatives shall be supplied by Writs of Election from the Executive Authority of the State in the Representation from which they shall happen. [Randolph, III, 17.]

The House of Representatives shall chuse its own Speaker, and other Officers. [Pinckney.]

The Senate of the United States shall be chosen by the Legislatures of the several States; Each Legislature shall chuse two Members. Each Member shall have one Vote. [Resolutions, IV, XI, XXII.]

The Members of the Senate shall be chosen for six Years; provided that immediately after the first Election, they shall be divided by Lot into three Classes as nearly as may be, and numbered one, two and three. The Seats of the Members of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, of the third Class at the Expiration of the sixth Year, and so on continually, that a third Part of the Members of the Senate may be chosen every second Year. [Resolutions, IV.]

The Senate of the United States shall have Power to make Treaties, to send Ambassadors, and to appoint the Judges of the Supreme national Court. [Randolph, VI, 3.]

Every Member of the Senate shall be of the Age of thirty Years at least, shall have been a Citizen in the United States for at least four Years before his Election, and shall be, at the Time of his Election, a Resident of the State for which he shall be chosen. [Resolutions, IV; Randolph, III, 3.]

Each House of the Legislature shall possess the Right of originating Bills, except in the Cases before mentioned. [Resolutions, V.]

In each House a Majority of the Members shall constitute a Quorum to do Business; but a smaller Number may adjourn from Day to Day. [Randolph, III, 12; IV, 5.]

The Senate shall chuse its own President and other Officers. [Pinckney.]

Each House of the Legislature shall be the Judge of the Elections, Returns, and Qualifications of its own Members. [Original.]

The Times and Places and the Manner of holding the Elections of the Members of each House shall be prescribed by the Legislatures of each State; but their Provisions concerning them may, at any Time, be altered and superseded by the Legislature of the United States. [Randolph, II, 8; III, 2.]

The Legislature of the United States shall have Authority to establish such qualifications of the Members of each House with regard to Property as to the said Legislature shall seem proper and expedient. [Resolutions, XXIII.]

Each House shall have Authority to determine the Rules of its Proceedings [Pinckney], and to punish its own Members for disorderly Behaviour. [Randolph, III, 13; IV, 7.]

Each House may expel a Member, but not a second Time for the same Offence. [Randolph, III, 13; IV, 7.]

Neither House shall adjourn for more than three Days without the Consent of the other; nor with such Consent, to any other Place than that at which the two Houses are sitting. But this Regulation shall be applied to the Senate only in its legislative Capacity. [Pinckney.]

The Members of each House shall, in all Cases, except Treason, Felony, and Breach of the Peace, be privileged from Arrest during their Attendance at Congress, and in going to and returning from it. [Randolph, III, 14; IV, 8.]

The Members of each House shall be ineligible to and incapable of holding any Office under the Authority of the United States during the Time for which they shall be respectively elected: And the Members of the Senate shall be ineligible to and incapable of holding any such office for one Year afterwards. [Resolutions, III, IV.]

The enacting Stile of the Laws of the United States shall be "be it enacted and it is hereby enacted by the House of Representatives, and by the Senate of the United States in Congress assembled. [Original.]

The Members of each House shall receive a Compensation for their services, to be ascertained and paid by the State in which they shall be chosen. [Resolutions, III, IV.]

The House of Representatives and the Senate, when it shall be acting in a legislative Capacity, shall keep a Journal of its Proceedings, and shall from Time to Time publish them: And the Yeas and Nays of the Members of each House on any Question shall at the Desire of any Member, be entered on the Journal. [Original.]

Freedom of speech.^a

The

[The first sheet ends at this point; the second, as above explained, is missing; the third begins in the midst of a provision respecting the admission of new States.]

mitted on the same Terms with the original States: [Resolutions, XVII, or Paterson, 8.] But the Legislature may make Conditions with the new States concerning the public Debt which shall be then subsisting. [Randolph, VII, 5 b.]

The United States shall guaranty to each State a Republican Form of Government; and shall protect each State against foreign Invasions, and, on the Application of its Legislature, against domestic Violence. [Resolutions, XVIII; Randolph, VIII, 2:4.]

This Constitution ought to be amended whenever such Amendment shall become necessary [Resolutions, XIX]; and on the Application of the Legislatures of two thirds of the States in the Union, the Legislature of the United States shall call a Convention for that Purpose. [Randolph, VIII, 5.]

The Members of the Legislature, and the executive and judicial Officers of the United States and of the several States shall be bound by Oath to support this Constitution. [Resolutions, XX; Paterson, 6.]

Resolved, That the Constitution proposed by this Convention to the People of the United States for their Approbation be laid before the United States in Congress assembled for their Agreement and Recommendation, and be afterwards submitted to a Convention chosen in each State under the Recommendation of its Legislature, in order to receive the Ratification of each Convention. [Resolutions, XXI.]

Resolved, That the Ratification of the Conventions of States shall be sufficient for organizing this Constitution: That each assenting Convention shall notify its Assent and Ratification to the United States in Congress assembled: That the United States in Congress assembled, after receiving the Assent and Ratification of the Conventions of States shall appoint and publish a Day, as early as may be, and appoint a Place for commencing Proceedings under this Constitution: That after such Publication or (in Case it shall not be made) after the Expiration of Days from the Time when the Ratification of the Convention of the State shall have been notified to Congress the Legislatures of the several States shall elect Members of the Senate, and direct the Election of Members of the House of Representatives, and shall provide for their Support: That the Members of the Legislature shall meet at the Time and Place assigned by Congress or (if Congress shall have assigned no Time and Place) at such Time and Place as shall have been agreed on by the Majority

^a A marginal memorandum.

of the Members elected for each House, and shall as soon as may be after their Meeting chuse the President of the United States, and proceed to execute this Constitution. [Randolph, VIII, Addenda.]

Every Bill, which shall have passed the House of Representatives and the Senate, shall before it become a Law be presented to the Governour of the United States for his Revision; If, upon such Revision, he approve of it, he shall signify his Approbation by signing it; But, if, upon such revision, it shall appear to him improper for being passed into a Law, he shall return it, together with his Objection against it in Writing, to that House in which it shall have originated, who shall enter the Objection at large on their Journal, and proceed to reconsider the Bill. But if after such Reconsideration, two thirds of that House shall, notwithstanding the Objections of the Governour, agree to pass it; it shall together with his Objections, be sent to the other House, by which it shall likewise be considered; and, if approved by two thirds of the other House also, it shall be a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for or against the Bill shall be enlisted in the Journal of each House respectively. If any Bill shall not be returned by the Governour within Days after it shall have been presented to him, it shall be a Law, unless the Legislature, by their Adjournment, prevent its Return; in which Case it shall be returned on the first Day of the next Meeting of the Legislature. [Massachusetts Constitution of 1780, Ch. I, Sect. I, Art. II.]^a

In all Disputes and Controversies now subsisting, or that may hereafter subsist between two or more States, the Senate shall possess the following Powers. Whenever the Legislature, or the Executive Authority, or the lawful Agent of any State in Controversy with another shall by Memorial to the Senate, state the Matter in Question, and apply for a Hearing, Notice of such Memorial and Application shall be given by Order of the Senate to the Legislature or the Executive Authority of the other State in Controversy. The Senate shall also assign a Day for the Appearance of the Parties by their Agents before that House. The Agents shall be directed to appoint by joint Consent Commissioners or Judges to constitute a Court for hearing and determining the Matter in Question. But if the Agents cannot agree, the Senate shall name three Persons out of each of the several States, and from the List of such Persons each Party shall alternately strike out one until the Number shall be reduced to thirteen; and from that Number not less than seven, nor more than nine Names, as the Senate shall direct, shall, in their Presence, be drawn out by Lot; and the Persons, whose names shall be so drawn, or any five of them, shall be Commissioners or Judges to hear and finally determine the Controversy; provided a major Part of the Judges, who shall hear the Cause, agree in the Determination. If either Party shall neglect to attend at the Day assigned, without shewing sufficient Reasons for not attending, or, being present, shall refuse to strike, the Senate shall proceed to nominate three Persons out of each State, and the Secretary or Clerk of the Senate shall strike in Behalf of the Party absent or refusing. If any of the Parties shall

^aA Massachusetts man, Gorham, was a member of the Committee of Detail.

refuse to submit to the Authority of such Court, or shall not appear to prosecute or defend their Claim or Cause; the Court shall nevertheless proceed to pronounce Judgment. The Judgment shall be final and conclusive. The Proceedings shall be transmitted to the President of the Senate, and shall be lodged among the public Records for the security of the Parties concerned. Every Commissioner shall before he sit in Judgment, take an Oath, to be administered by one of the Judges of the Supreme or Superior Court of the State, where the Cause shall be tried, "well and truly to hear and determine the Matter in Question, according to the best of his Judgment, without Favour, Affection or Hope of Reward." [Articles of Confederation, IX.] ^a

All Controversies concerning lands claimed under different Grants of two or more States, whose Jurisdictions, as they respect such Lands, shall have been decided or adjusted subsequent to such Grants, shall, on Application to the Senate, be finally determined, as near as may be, in the same Manner as is before prescribed for deciding Controversies between different States. [Articles of Confederation, IX.]

B.

The later and more finished of Wilson's two drafts differs so little from the report of the Committee of Detail that the easiest way to give a notion of its contents is to state *seriatim* the alterations which one would have to make in the latter document^b in order to reproduce, with almost verbal exactness, the text of the former. They are but eleven in number:

1. Article III of the report of the Committee of Detail, omit: "The Legislature shall meet on the first Monday in December every year."

2. Article IV, transpose section 7 and the last half of section 6.

3. Article V, section 1, omit: "Vacancies may be supplied by the Executive until the next meeting of the Legislature."

4. Article VII, section 1, after the twelfth clause, add: "and of Treason against the U. S. or any of them; Not to work Corruption of Blood or Forfeit, except during the Life of the Party: to regulate the Discipline of the Militia of the several States;"

5. Article VII, section 2, omit (except in so far as it is represented by the clauses just mentioned).

6. Article VII, section 3, omit: "except Indians not paying taxes."

^a For a suggestion as to the origin of this provision, see my Essays in the Constitutional History of the United States, pp. 41, 45.

^b As given in the Documentary History, III, 444-458.

7. After that section add: "From the first Meeting of the Legislature until the Number of Citizens and Inhabitants shall be taken as aforesaid, direct Taxation shall be in Proportion to the Number of Representatives chosen in each State."

8. Article X, section 2, *ad fin.*, the reading is: "until another President of the United States be chosen, or until the President impeached or disabled be acquitted or his Disability be removed;" and in the preceding clause impeachment is mentioned.

9. After Article X, add: "All Commissions, Patents and Writs shall be in the Name of the United States of America."

10. Article XI, section 1, omit: "when necessary."

11. Article XIII, omit: "or make anything but specie a tender in payment of debts." The other clauses of Articles XII and XIII are present in the Wilson draft, but arranged in a different order and placed as one article (No. 10) immediately after that which prescribes the supremacy of the federal law, corresponding to Article VIII of the committee's report.

IX. MEMBERS WHO DID NOT SIGN.

Seventy-three delegates were elected to the Convention.^a Of these, 18 did not attend. Of the 55 who attended, the signatures of only 39 appear at the end of the document. Among the 16 whose names are not found there, Elbridge Gerry, Luther Martin,^b George Mason, and Edmund Randolph, it is familiar, refused to sign. The object of the present inquiry is to explain the absence of the other 12 names. This may not be entirely useless if it is still possible to say, as is said in one of the most elaborate accounts of the work of the Convention, that they all declined to affix their signatures.^c In reality, all 12 were absent when the instrument was signed; and there is evidence that 7 approved of it, and no evidence that any but 3 of the 12 opposed it.

^aThe list which Secretary Adams published in the *Journal* of 1819, pp. 13-15, contains but 65 names. Mr. Paul Ford printed what is presumed to be a complete list (73 names; he says 71) in the *Collector* for September and October, 1888. This was reprinted as a separate pamphlet, Brooklyn, 1888; also in Draper's *Essay on the Autographic Collections of the Signers*, pp. 114-117; in Wisconsin Historical Society Collections, X; in Carson's *History of the Celebration of the Hundredth Anniversary of the Constitution*, I, 135 ss.; and in my *Dictionary of United States History*, p. 163.

^bMartin says that he left Philadelphia on September 1. Letter to the *Maryland Journal* in Ford, *Essays on the Constitution*, p. 341. "Landholder" (Ellsworth) says the same, *ibid.*, p. 186.

^cThorpe, *Constitutional History of the United States*, I, 591.

The 12 members under consideration are Caleb Strong, of Massachusetts; Oliver Ellsworth, of Connecticut; Robert Yates and John Lansing, of New York; William C. Houston, of New Jersey; John Francis Mercer, of Maryland; George Wythe and James McClurg, of Virginia; Alexander Martin and William R. Davie, of North Carolina; and William Pierce and William Houstoun, of Georgia. We will take them up in the presumed order of their departure from the Convention.

Of Chancellor Wythe, Madison records in his notes under date of June 4 that he had already gone home.^a His letter of June 16, written from Williamsburg to Governor Randolph, shows that the cause of his retirement was the dangerous illness of his wife.^b A letter of July 16 to Beverley Randolph, the acting governor, shows that this cause, "the only one which could have moved me to retire from the Convention," continued urgent, and he explained that both these letters were intended to express his resignation.^c Mrs. Wythe's illness proved fatal.^d His course in the Virginia convention plainly evinces his approval of the Constitution.

Major Pierce left the Convention about July 1. In Madison's notes and those of Yates we find him speaking on June 29.^e From July 4 to August 1, and from August 27 to October 1, he was in attendance upon Congress at New York.^f Two letters of Hamilton show the latter adjusting a difficulty and preventing a duel between Pierce and a Mr. Auldjo, and another, New York, July 26, 1787, says: "He informs me that he is shortly to set out on a jaunt up the North River."^g Apart from Congressional duty the reasons for his absence do not appear. It was not for lack of appreciation of the honor of a seat in the Convention. His letter to St. George Tucker, written September 28, says:

You will probably be surprised at not finding my name affixed to it, and will no doubt be desirous of having a reason for it. Know, then, sir, that I was absent in New York on a piece of business so necessary that it

^a Documentary History, III, 54; Hunt, III, 81.

^b Calendar of the Emmet Collection, No. 9542. See also Randolph to Beverley Randolph, June 21, in Va. Col. St. P., IV, 298.

^c Brotherhead, Centennial Book of the Signers, p. 257.

^d Madison, Letters, I, 339.

^e Documentary History, III, 241; Hunt, III, 329; Yates, p. 187; Elliot, I, 464.

^f Journals of Congress, IV, 750-765, 773-783; memoranda in a manuscript volume of his which I have seen. A letter of his to Gardequi, dated New York, September 3, 1787, is in the New Jersey Journal for November 28, 1787, and in Carey's American Museum, II, 583.

^g Works, ed. Hamilton, I, 437, 439; ed. Lodge, VIII, 176, 177, 178.

became unavoidable. I approve of its principles, and would have signed it with all my heart had I been present."^a

Lansing and Yates left the Convention on or soon after July 10.^b Elliot says July 5.^c But a comparison of the journal of the Convention with the sheets of yeas and nays shows New York casting a vote through July 10,^d and there is other though not conclusive evidence that Yates was present on July 9.^e The attitude of these two toward the Constitution is well known.

William C. Houston, of New Jersey, is not known to have been present after July 17, if then. He spoke then, if the indexer of the third volume of the *Documentary History* is right in attributing certain remarks made that day to him rather than to William Houstoun, of Georgia; as to this no evidence is known to the present writer.^f He is not stated to have spoken on any other occasion. Pierce, in his descriptions of the members, omits his name.^g Mr. Thorpe, perhaps on local New Jersey evidence, says that he withdrew on account of illness.^h

Doctor McClurg was present on July 20.ⁱ But on August 5 he writes to Madison from Richmond.^j In a later unprinted letter to Madison, written on October 31, he discusses the Constitution.^k Rives, probably on the basis of this letter, says that McClurg favored it.^l

William Houstoun, of Georgia, was present till July 24.^m

Davie does not appear in the proceedings after July 26.ⁿ On August 6 he writes to Iredell that he shall leave on Monday, which would mean August 13,^o and on August 23 he writes to Governor Caswell from Halifax, N. C., saying that

^a *Georgia Gazette*, March 20, 1788; *American Historical Review*, III, 311.

^b Bancroft, II, 75; Martin, in Elliot, I, 358.

^c I, 479.

^d *Documentary History*, I, 86, 250.

^e Appointment of Yates on a committee. *Documentary History*, I, 81, 299.

^f *Documentary History*, III, 358; Hunt, III, 455. Madison spells the two names the same.

^g *American Historical Review*, III, 327.

^h *Constitutional History of the United States*, I, 591.

ⁱ *Documentary History*, III, 389.

^j *Bulletin of the Bureau of Rolls and Library*, I, 187.

^k *Ibid.*

^l *Life of James Madison*, II, 253.

^m *Documentary History*, III, 411. Internal evidence shows nearly all the remarks which Madison credits to "Mr. Houstoun" to have been made by a Georgia member.

ⁿ *Documentary History*, III, 431.

^o *McRee*, II, 168.

he had left Philadelphia on the 13th.^a In the North Carolina convention he showed his approval of the Constitution.

Strong was present on August 15.^b That he left Philadelphia before August 25 is apparent from the letter of Gorham printed above—No. 4 in Section II. Senator Lodge states that he was called home by illness in his family.^c In Parsons's notes we find him saying in the Massachusetts convention that "through sickness he was obliged to return home, but had he been there he should have signed" the Constitution.^d He voted for its ratification.

Merceer was present from August 6 to August 17.^e In the Maryland convention he voted against ratification of the Constitution.

Governor Martin, of North Carolina, was in Philadelphia as late as August 20, but expected to leave on September 1, having to attend the superior court in Salisbury in that month.^f He favored ratification.

Judge Ellsworth was present in the Convention on August 23.^g Jeremiah Evarts, in his sketch of the life of Roger Sherman, in Sanderson's *Lives of the Signers*, explains that, Sherman and Ellsworth both being judges of the superior court of Connecticut, Sherman had to be absent from the Convention at its beginning, Ellsworth at its end.^h Ellsworth visited President Stiles at New Haven on August 27, on his way home.ⁱ That he approved of the Constitution is evident from the letter which he and Sherman wrote to the governor from New London on September 26,^j and from his speeches in the Connecticut convention.

That Dickinson, though his name appears upon the document, was absent on the last day, has been shown in a preceding portion of these studies (p. 97).

^a North Carolina State Records, XX, 766. Pitkin says, II, 262, that he has been assured that Davie, Strong, and Ellsworth would have signed if they could have stayed to the end.

^b Documentary History, III, 535.

^c Mass. Hist. Soc. Proc., I, 296.

^d Debates of the Massachusetts Convention, ed. 1856, p. 316.

^e Documentary History, I, 112; III, 441, 555. Mr. Ford (*Draper*, p. 116) says that Merceer left on September 4.

^f North Carolina Records, XX, 763.

^g Documentary History, III, 602.

^h Signers, II, 41.

ⁱ Literary Diary of President Stiles, III, 279.

^j Carey's American Museum, II, 131, 135; Elliot, I, 191, 192.

X. THE ACTION OF THE STATES.

The following paragraphs show, for each State, the dates of the sessions of its legislature which intervened between September 17, 1787, when the Philadelphia Convention adjourned, and the date of the ratification of the Constitution by that State; also the official or formal materials—journals and debates—for a knowledge of the proceedings of those sessions.

New Hampshire.—Four sessions. The "Proceedings of the Honorable Senate" and the "Legislative Journals of the House of Representatives of the State of New Hampshire" were contemporaneously printed at Portsmouth. They have been reprinted in Volume XXI of the New Hampshire State Papers. The resolution for calling a convention was passed on December 14, 1787.

September 12-29, 1787. New Hampshire State Papers, XXI, 89-106 (S.); 109-143 (H. R.).

December 5-15, 1787. New Hampshire State Papers, XXI, 145-154 (S.); 155-169 (H. R.).

January 23 to February 13, 1788. New Hampshire State Papers, XXI, 171-194 (S.); 195-232 (H. R.).

June 4-18, 1788. New Hampshire State Papers, XXI, 261-286 (S.); 287-331 (H. R.).

Massachusetts.—One session, the second of the existing legislature, October 17 to November 24, 1787. Its journals exist only in manuscript, in the office of the secretary of the Commonwealth. The legislative proceedings of the General Court relative to the new Constitution are, however, printed in the *Debates and Proceedings of the Convention of 1788*, ed. 1856. The joint resolution for holding the convention was passed on October 25, 1787, and is printed in the *Documentary History*, II, 91-92.

Rhode Island.—Fifteen sessions, beginning respectively on October 29, 1787; February 25, March 31, May 7, June 9, October 27, December 29, 1788; March 9, May 6, June 8, September 15, October 12, October 28, 1789; January 11 and May 5, 1790. Their "Schedules," or "Acts and Resolves," resembling a journal in character, were printed contemporaneously. Extracts from them, embracing what is most important to the present purpose, are printed in the colonial records of Rhode Island, X, 262-379. The resolve for holding a convention was passed on January 17, 1790.

Connecticut.—One session, October 11 to November 1, 1787, of which there are no printed journals. The resolve for holding the convention was passed on October 16.

New York.—One session, January 1^a to March 22, 1788. The Journal of the Senate and the Journal of the Assembly of the State of New York were contemporaneously printed, but have not been reprinted. The resolution for holding a convention was passed on February 1, 1788.

New Jersey.—One session, October 23 to November 7, 1787. The Journal of the Council, Twelfth Session, First Sitting, and the Votes of the Twelfth Assembly, First Sitting, were contemporaneously printed at Trenton. The convention was called by virtue of a resolution of October 29, 1787,^b and an act of November 1, both of which will be found printed in the Documentary History of the Constitution, II, 61, 62.

Pennsylvania.—Two sessions. Third session of the eleventh assembly, September 4–29, 1787; first session of the twelfth assembly, October 22 to November 29, 1787. Their journals—e. g., Minutes of the First Session of the Twelfth General Assembly of the Commonwealth of Pennsylvania—were printed contemporaneously in Philadelphia. For debates, see Proceedings and Debates of the General Assembly of Pennsylvania, taken in shorthand by Thomas Lloyd, Philadelphia, 1787; Carey's American Museum, II, 362–366; and McMaster and Stone, Pennsylvania and the Federal Constitution, pp. 27–72. The resolution for calling a convention was passed, by well-known means, on September 29, 1787. An act for the members' compensation was passed on November 10.

Delaware.—One session, which legally began on October 20, 1787 (but there was no quorum till October 25), and which ended November 10. The Minutes of the Council of the Delaware State from 1776 to 1792 were printed at Wilmington in 1888, as No. 6 of the Papers of the Historical Society of Delaware. The Votes and Proceedings of the House of Assembly of the Delaware State were (1787) printed at Wilmington. The resolution for calling a convention was passed November 10.

^a But there was no quorum in the Assembly till January 9, nor in the Senate till January 11.

^b Baneroft, Constitution, II, 252, says "on the 26th;" but the above date is given in the Doc. Hist., *ubi sup.*, in the Minutes of the Convention and in the New Jersey Journal.

Maryland.—One session, November 5^a to December 17, 1787. The journals of the senate and house of delegates were printed in 1787. Of the debates, we have the speech of Luther Martin, first printed, from the notes of "a customer," in the *Maryland Gazette and Baltimore Advertiser*, December 28, 1787, to February 8, 1788; then in the *State Gazette of South Carolina*, and probably in other newspapers; then as a pamphlet. *The Genuine Information delivered to the Legislature of the State of Maryland, relative to the Proceedings of the General Convention lately held at Philadelphia, by Luther Martin, Philadelphia, 1788* (Ford, 119); reprinted in Yates, *Secret Proceedings*, Albany, 1821, Washington, 1836, and the other editions; and in *Elliot's Debates*, first ed., Vol. IV; third ed., Vol. I. The vote for calling a convention passed the house on November 27, the senate on December 1.

Virginia.—One session, October 15, 1787, to January 8, 1788. The journals of the senate and house of delegates were printed contemporaneously, and also in 1828, at Richmond. The debate of October 25 is reported in Miss Rowland's *George Mason*, II, 190–191, from the *Pennsylvania Packet* of November 10. A resolution for calling a convention was passed by the house on October 25, 1787, amended by the senate, and finally passed on October 31. An act respecting the convention was passed on December 12. Henning, XII, 462.

North Carolina.—Three sessions. The journals of the senate and house of commons are to be found either in Vol. XX of the *State Records of North Carolina* or in contemporary print.

November 19–December 22, 1787. Journals (S., H. C.) in *N. C. Rec.*, XX.

November 3–December 6, 1788. Journals (S.) *N. C. Rec.*, XX; (H. C.) Edenton, 1788.

November 2–22, 1789. Journals (S., H. C.), Edenton, 1789.

The first convention was called by virtue of a resolution of December 6, 1787; the second, by one of November 17, 1788.

South Carolina.—One session, January 8 to February 29, 1788. The journals remain in manuscript in the office of the secretary of state at Columbia. Of the debates, we have: *Debates which arose in the House of Representatives of South Carolina on the Constitution framed for the United States by*

^a There was no quorum in the house till November 11, nor in the senate till November 22.

a Convention of Delegates assembled at Philadelphia; Charleston, collected by R. Haswell and published at the City Gazette Printing Office, No. 47 Bay, 1788 (Ford 152). This pamphlet was reprinted with additions in 1831 (Ford 153), and in the third ("second") edition of Elliot's Debates, IV, 253-317. The resolution for calling the convention was passed on January 19, 1788; the ordinance giving the members the usual privileges, etc., on February 29.

Georgia.—One session, July 3 to October 31, 1787. Another began on January 1, 1788, the day before ratification. The journals are in manuscript in the office of the secretary of state. The resolution for calling the convention was passed on October 26, 1787, and is printed in Documentary History, II, 83.

XI. JOURNALS AND DEBATES OF THE STATE CONVENTIONS.

The formal or official journal has not in all cases been printed, but the volumes of debates usually contain, as incidental to their main purpose, much of the material appropriate to a journal. In the case of the rarer publications I have referred by number to Mr. Ford's Bibliography, where fuller titles, and sometimes notes, may be found.

NEW HAMPSHIRE.

Journal.—Historical Magazine, XIII, 257-263.

New Hampshire State Papers, X, 1-22.

Debates.—(Fragments.) Elliot, Debates, third ed., II, 203-204.

Thomas C. Amory, The Military Services and Public Life of Maj. Gen. John Sullivan, pp. 230-231.

Joseph B. Walker, History of the New Hampshire Convention, pp. 112-116.

MASSACHUSETTS.

Journal.—In Debates, ed. 1856.

Debates.—Debates, Resolutions, and other Proceedings of the Convention of the Commonwealth of Massachusetts, Boston, 1788. (Ford, 122.)

American Museum, III, 343-362.

Debates, Resolutions, and other Proceedings, Boston, 1808. (Ford, 123.)

Elliot, Debates, first ed., I, 25-184.

Elliot, Debates, third ed., II, 1-202.

Debates and Proceedings in the Convention of the Commonwealth of Massachusetts, Boston, 1856. (Contains the material which was in the editions of 1788 and 1808, and also the official journal and the notes of Theophilus Parsons.)

Notes of Jeremy Belknap, in Mass. Hist. Soc. Proc., III, 296-304.

RHODE ISLAND.

Journal.—W. R. Staples, Rhode Island in the Continental Congress, pp. 640-674. (Contains also some notes of the debates; see explanation on p. 644.)

CONNECTICUT.

Debates.—(Fragments.) American Museum, II, 334-343 (Ellsworth); IV, 167-170.

Elliot, *Debates*, third ed., II, 185-202.

G. H. Hollister, *History of Connecticut*, II, 456-460 (Ellsworth).

Frank Moore, *American Eloquence*, I, 404-409 (Ellsworth)

NEW YORK.

Journal.—*Journal of the Convention of the State of New York*, Poughkeepsie, 1788. (Ford, 130.)

Debates.—*The Debates and Proceedings of the Convention of the State of New York*, New York, 1788. (Ford, 129.)

American Museum, IV, 172-173 (G. Livingston).

Elliot, *Debates*, first ed., I, 185-358; III, 1*-8* (the last a speech by Tredwell, never delivered).

Elliot, *Debates*, third ed., II, 205-413.

Hammond, *History of Political Parties*, I, 26-28 (G. Livingston).

Hamilton, *Works*, ed., J. C. Hamilton, II, 426-463 (Hamilton).

Moore, *American Eloquence*, I, 187-204 (Hamilton).

Johnston, *American Orations*, I, 39-52 (Hamilton).

NEW JERSEY.

Journal.—*Minutes of the Convention of the State of New Jersey*, Trenton, 1788. (Ford, 127; reprinted at Trenton in 1888 by C. L. Traver.)

PENNSYLVANIA.

Journal.—*Minutes of the Convention of the Commonwealth of Pennsylvania*, Philadelphia, 1787. (Ford, 141.)

Debates.—*The Substance of a Speech delivered by James Wilson, esq.*, Philadelphia, 1787. (Ford, 168.)

Debates of the Convention of the State of Pennsylvania.

* * * taken accurately in shorthand by Thomas Lloyd.

Philadelphia, 1788 (McKean, Wilson). (Ford, 140.)

Elliot, *Debates*, first ed., III, 221-322.

Elliot, *Debates*, third ed., II, 415-542.

Moore, *American Eloquence*, I, 74-82 (Wilson).

McMaster and Stone, *Pennsylvania and the Federal Constitution*, pp. 211-431 and (Wilson's notes) 765-785.

DELAWARE.

[Neither journal nor debates has, I believe, ever been published.]

MARYLAND.

Journal.—Documentary History of the Constitution, II, 97-122.

VIRGINIA.

Journal.—Journal of the Convention of Virginia, Richmond, 1827. (Ford, 159).

Debates.—Debates and other Proceedings of the Convention of Virginia, Petersburg, 1788, 1789, three volumes. (Ford, 157.) The notes for these volumes were taken in shorthand by David Robertson, of Petersburg. A note on the last page of this original edition, III, 228, tells us that "The Gentleman who took the foregoing Debates in Short-Hand, having had but an ineligible seat in the Gallery, a situation remote from the speakers, where he was frequently interrupted by the noise made by those who were constantly going out and coming in, is conscious that he must have lost some of the most beautiful periods and best observations of the different speakers; and is afraid that in some instances he may have misapprehended their meaning. * * * He further begs leave to add, that his having taken the Debates of the Convention of North Carolina, and the pressure of his other avocations disabled him from furnishing the Printers with so fair a copy as he would otherwise have done. He was only able to give him a rough transcription from the Short-Hand original," and could not read the proofs. Rives, II, 586, says that Madison's speeches were not revised by him and that he presumes none of the others were revised by their authors, unless Monroe's first speech.

Debates and other Proceedings of the Convention of Virginia, Richmond, 1805. For this second edition Robertson corrected his text and compared it in part with the original shorthand notes.

Elliot, Debates, first ed., Vol. II; third ed., Vol. III. (From the above.) When Elliot was preparing his first edition he offered Madison the chance to revise his speeches as given by Robertson; but Madison did not think it fair to the others when forty years had elapsed. See his letter of November, 1827. Letters, III, 598.

Moore, American Eloquence, I, 13-39 (Henry), 127-144 (Madison), 165-173 (Randolph), II, 10-20 (Marshall).

Johnston, American Orations, I, 53-71 (Madison).

NORTH CAROLINA.

Journals.—(First convention.) Journal of the Convention of North Carolina, Hillsborough, 1788.

(Second convention.) Journal of the Convention of the State of North Carolina, Edenton [1789]. (Ford, 135; reprinted in the State Chronicle of Raleigh, November 15, 1889.)

Debates.—(First convention.) Proceedings and Debates of the Convention of North Carolina, Edenton, 1789. (Ford, 137.) “A Mr. Robinson [Robertson] attended the convention as stenographer. The Federalists were desirous that the debates should be published. * * * At their instance Iredell and Davie assumed the responsibility and care of the publication. Neat copies were made in Edenton by Mr. Lorimer (an Englishman) from the notes of the reporter; and as far as practicable the speeches were submitted to their authors for correction. This enterprise involved Iredell and Davie in some pecuniary loss. * * * The debates were printed at Edenton by Hodge and Wills, and made their appearance about the last of June, 1789. One thousand copies were published.” McRee, *Life of Iredell*, 11, 235.

Elliot, *Debates*, first ed., III, 17-220.

Elliot, *Debates*, third ed., IV, 1-252.

(Second convention.) Fragments in newspapers, according to Mr. Ford.

SOUTH CAROLINA.

Debates.—State Gazette, of South Carolina, May, 1788. (Pinckney's speech at the opening, May 14.)

American Museum, IV, 170-172 (two speeches), 256-263 (Charles Pinckney's speech of May 14).

Debates which arose in the House of Representatives [as above, pp. 163, 164]. Together with such notices of the Convention as could be procured. (Charleston, A. E. Miller, 1831.

Elliot, *Debates*, third ed., IV., 318-341.

GEORGIA.

[Nothing of either journal or debates is known to have been printed, unless in some contemporary newspaper outside the State; the Georgia newspapers seem to have nothing of the sort.]

